

(CORRECTED COPY)

P.L. 2019, CHAPTER 263, *approved August 23, 2019*  
Assembly, No. 5293 (*Second Reprint*)

1   **AN ACT** concerning the remediation of contaminated sites, and  
2       amending and supplementing various parts of the statutory law.

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7       1. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read as  
8 follows:

9       3. As used in this act:

10       "Remedial action workplan" means a plan for the remedial action  
11 to be undertaken at an industrial establishment, or at any area to which  
12 a discharge originating at the industrial establishment is migrating or  
13 has migrated; a description of the remedial action to be used to  
14 remediate the industrial establishment; a time schedule and cost  
15 estimate of the implementation of the remedial action; and any other  
16 relevant information the department deems necessary;

17       "Closing operations" means:

18       (1) the cessation of operations resulting in at least a 90 percent  
19 reduction in the total value of the product output from the entire  
20 industrial establishment, as measured on a constant, annual date-  
21 specific basis, within any five-year period, or, for industrial  
22 establishments for which the product output is undefined, a 90 percent  
23 reduction in the number of employees or a 90 percent reduction in the  
24 area of operations of an industrial establishment within any five-year  
25 period; provided, however, the department may approve a waiver of  
26 the provisions of this paragraph for any owner or operator who, upon  
27 application and review, evidences a good faith effort to maintain and  
28 expand product output, the number of employees, or area of operations  
29 of the affected industrial establishment;

30       (2) any temporary cessation of operations of an industrial  
31 establishment for a period of not less than two years;

32       (3) any judicial proceeding or final agency action through which  
33 an industrial establishment becomes nonoperational for health or  
34 safety reasons;

35       (4) the initiation of bankruptcy proceedings pursuant to Chapter 7  
36 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing of  
37 a plan of reorganization that provides for a liquidation pursuant to

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted June 10, 2019.

<sup>2</sup>Senate floor amendments adopted June 20, 2019.

1 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

2 (5) any change in operations of an industrial establishment that

3 changes the industrial establishment's Standard Industrial

4 Classification number to one that is not subject to this act; or

5 (6) the termination of a lease unless there is no disruption in

6 operations of the industrial establishment, or the assignment of a lease;

7 "Transferring ownership or operations" means:

8 (1) any transaction or proceeding through which an industrial

9 establishment undergoes a change in ownership;

10 (2) the sale or transfer of more than 50 **[%]** percent of the assets

11 of an industrial establishment within any five-year period, as measured

12 on a constant, annual date-specific basis;

13 (3) the execution of a lease for a period of 99 years or longer for an

14 industrial establishment; or

15 (4) the dissolution of an entity that is an owner or operator or an

16 indirect owner of an industrial establishment, except for any

17 dissolution of an indirect owner of an industrial establishment whose

18 assets would have been unavailable for the remediation of the

19 industrial establishment if the dissolution had not occurred;

20 "Change in ownership" means:

21 (1) the sale or transfer of the business of an industrial

22 establishment or any of its real property;

23 (2) the sale or transfer of stock in a corporation resulting in a

24 merger or consolidation involving the direct owner or operator or

25 indirect owner of the industrial establishment;

26 (3) the sale or transfer of stock in a corporation, or the transfer of a

27 partnership interest, resulting in a change in the person holding the

28 controlling interest in the direct owner or operator or indirect owner of

29 an industrial establishment;

30 (4) the sale or transfer of title to an industrial establishment or the

31 real property of an industrial establishment by exercising an option to

32 purchase; or

33 (5) the sale or transfer of a partnership interest in a partnership that

34 owns or operates an industrial establishment, that would reduce, by 10

35 **[%]** percent or more, the assets available for remediation of the

36 industrial establishment;

37 "Change in ownership" shall not include:

38 (1) a corporate reorganization not substantially affecting the

39 ownership of the industrial establishment;

40 (2) a transaction or series of transactions involving the transfer of

41 stock, assets or both, among corporations under common ownership, if

42 the transaction or transactions will not result in the diminution of the

43 net worth of the corporation that directly owns or operates the

44 industrial establishment by more than 10 **[%]** percent, or if an equal or

45 greater amount in assets is available for the remediation of the

46 industrial establishment before and after the transaction or

47 transactions;

1 (3) a transaction or series of transactions involving the transfer of  
2 stock, assets or both, resulting in the merger or de facto merger or  
3 consolidation of the indirect owner with another entity, or in a change  
4 in the person holding the controlling interest of the indirect owner of  
5 an industrial establishment, when the indirect owner's assets would  
6 have been unavailable for cleanup if the transaction or transactions had  
7 not occurred;

8 (4) a transfer where the transferor is the sibling, spouse, child,  
9 parent, grandparent, child of a sibling, or sibling of a parent of the  
10 transferee;

11 (5) a transfer to confirm or correct any deficiencies in the recorded  
12 title of an industrial establishment;

13 (6) a transfer to release a contingent or reversionary interest except  
14 for any transfer of a lessor's reversionary interest in leased real  
15 property;

16 (7) a transfer of an industrial establishment by devise or intestate  
17 succession;

18 (8) the granting or termination of an easement or a license to any  
19 portion of an industrial establishment;

20 (9) the sale or transfer of real property pursuant to a condemnation  
21 proceeding initiated pursuant to the "Eminent Domain Act of 1971,"  
22 P.L.1971, c.361 (C.20:3-1 et seq.);

23 (10) execution, delivery and filing or recording of any mortgage,  
24 security interest, collateral assignment or other lien on real or personal  
25 property; or

26 (11) any transfer of personal property pursuant to a valid  
27 security agreement, collateral assignment or other lien, including, but  
28 not limited to, seizure or replevin of such personal property which  
29 transfer is for the purpose of implementing the secured party's rights in  
30 the personal property which is the collateral;

31 "Department" means the Department of Environmental Protection;

32 "Hazardous substances" means those elements and compounds,  
33 including petroleum products, which are defined as such by the  
34 department, after public hearing, and which shall be consistent to the  
35 maximum extent possible with, and which shall include, the list of  
36 hazardous substances adopted by the Environmental Protection  
37 Agency pursuant to Section 311 of the "Federal Water Pollution  
38 Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list of  
39 toxic pollutants designated by Congress or the Environmental  
40 Protection Agency pursuant to Section 307 of that act (33 U.S.C.  
41 s.1317); except that sewage and sewage sludge shall not be considered  
42 as hazardous substances for the purposes of this act;

43 "Hazardous waste" shall have the same meaning as provided in  
44 section 1 of P.L.1976, c.99 (C.13:1E-38);

45 "Industrial establishment" means any place of business engaged in  
46 operations which involve the generation, manufacture, refining,  
47 transportation, treatment, storage, handling, or disposal of hazardous  
48 substances or hazardous wastes on-site, above or below ground,  
49 having a Standard Industrial Classification number within 22-39

1 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
2 Industrial Classifications Manual prepared by the Office of  
3 Management and Budget in the Executive Office of the President of  
4 the United States. Those facilities or parts of facilities subject to  
5 operational closure and post-closure maintenance requirements  
6 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
7 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
8 Act," sections 1 through 43 of P.L.1981, c.279 (C.13:1E-49 et seq.) or  
9 the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any  
10 establishment engaged in the production or distribution of agricultural  
11 commodities, shall not be considered industrial establishments for the  
12 purposes of this act. The department may, pursuant to the  
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
14 exempt certain sub-groups or classes of operations within those sub-  
15 groups within the Standard Industrial Classification major group  
16 numbers listed in this subsection upon a finding that the operation of  
17 the industrial establishment does not pose a risk to public health and  
18 safety;

19 "Negative declaration" means a written declaration, submitted by  
20 the owner or operator of an industrial establishment or other person  
21 assuming responsibility for the remediation under paragraph (3) of  
22 subsection b. of section 4 of P.L.1983, c.330 to the department,  
23 certifying that there has been no discharge of hazardous substances or  
24 hazardous wastes on the site, or that any such discharge on the site or  
25 discharge that has migrated or is migrating from the site has been  
26 remediated in accordance with procedures approved by the department  
27 and in accordance with any applicable remediation regulations;

28 "Discharge" means an intentional or unintentional action or  
29 omission resulting in the releasing, spilling, leaking, pumping,  
30 pouring, emitting, emptying, or dumping of a hazardous substance or  
31 hazardous waste into the waters or onto the lands of the State;

32 "No further action letter" means a written determination by the  
33 department that, based upon an evaluation of the historical use of the  
34 industrial establishment and the property, or of an area of concern or  
35 areas of concern, as applicable, and any other investigation or action  
36 the department deems necessary, there are no discharged hazardous  
37 substances or hazardous wastes present at the site of the industrial  
38 establishment, at the area of concern or areas of concern, or at any  
39 other site to which discharged hazardous substances or hazardous  
40 wastes originating at the industrial establishment have migrated, and  
41 that any discharged hazardous substances or hazardous wastes present  
42 at the industrial establishment or that have migrated from the site have  
43 been remediated in accordance with applicable remediation  
44 regulations;

45 "Indirect owner" means any person who holds a controlling  
46 interest in a direct owner or operator, holds a controlling interest in  
47 another indirect owner, or holds an interest in a partnership which is an  
48 indirect owner or a direct owner or operator, of an industrial  
49 establishment;

1 "Direct owner or operator" means any person that directly owns or  
2 operates an industrial establishment. A holder of a mortgage or other  
3 security interest in the industrial establishment shall not be deemed to  
4 be a direct owner or operator of the industrial establishment unless or  
5 until it loses its exemption under P.L.1993, c.112 (C.58:10-  
6 23.11g4 et al.) or obtains title to the industrial establishment by deed  
7 of foreclosure, by other deed, or by court order or other process;

8 "Area of concern" means any location where hazardous substances  
9 or hazardous wastes are or were known or suspected to have been  
10 discharged, generated, manufactured, refined, transported, stored,  
11 handled, treated, or disposed, or where hazardous substances or  
12 hazardous wastes have or may have migrated;

13 "Licensed site remediation professional" means an individual who  
14 is licensed by the Site Remediation Professional Licensing Board  
15 pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the department  
16 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

17 "Owner" means any person who owns the real property of an  
18 industrial establishment or who owns the industrial establishment. A  
19 holder of a mortgage or other security interest in the industrial  
20 establishment shall not be deemed to be an owner of the industrial  
21 establishment unless or until it loses its exemption under P.L.1993,  
22 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial  
23 establishment by deed of foreclosure, by other deed, or by court order  
24 or other process;

25 "Operator" means any person, including users, tenants, or  
26 occupants, having and exercising direct actual control of the operations  
27 of an industrial establishment. A holder of a mortgage or other  
28 security interest in the industrial establishment shall not be deemed to  
29 be an operator of the industrial establishment unless or until it loses its  
30 exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains  
31 title to the industrial establishment by deed of foreclosure, by other  
32 deed, or by court order or other process;

33 "Preliminary assessment" means the first phase in the process of  
34 identifying areas of concern and determining whether hazardous  
35 substances or hazardous wastes are or were present at an industrial  
36 establishment or have migrated or are migrating from the industrial  
37 establishment, and shall include the initial search for and evaluation of,  
38 existing site specific operational and environmental information, both  
39 current and historic, to determine if further investigation concerning  
40 the documented, alleged, suspected or latent discharge of any  
41 hazardous substance or hazardous waste is required. The evaluation of  
42 historic information shall be conducted from 1932 to the present,  
43 except that the department may require the search for and evaluation  
44 of additional information relating to ownership and use of the site prior  
45 to 1932 if such information is available through diligent inquiry of  
46 public records;

47 "Remediation" or "remediate" means all **[necessary]** actions to  
48 investigate **[and]** , clean up , or respond to any known, suspected, or  
49 threatened discharge of hazardous substances or hazardous wastes,

1 including **【, as necessary,】** the preliminary assessment, site  
2 investigation, remedial investigation, and remedial action , or any  
3 portion thereof <sup>1</sup>, provided, however, that "remediation" or  
4 "remediate" shall not include the payment of compensation for damage  
5 to, or loss of, natural resources<sup>1</sup>;

6 "Remediation standards" means the combination of numeric  
7 standards that establish a level or concentration and narrative  
8 standards, to which hazardous substances or hazardous wastes must be  
9 treated, removed, or otherwise cleaned for soil, groundwater, or  
10 surface water, as provided by the department pursuant to section 35 of  
11 P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or  
12 environmental standards;

13 "Remedial action" means those actions taken at an industrial  
14 establishment or offsite of an industrial establishment if hazardous  
15 substances or hazardous wastes have migrated or are migrating  
16 therefrom, as may be required by the department to protect public  
17 health, safety, and the environment. These actions may include the  
18 removal, treatment, containment, transportation, securing, or other  
19 engineering measures, whether to an unrestricted use or otherwise,  
20 designed to ensure that any discharged hazardous substances or  
21 hazardous wastes at the site or that have migrated or are migrating  
22 from the site, are remediated in compliance with the applicable health  
23 risk or environmental standards;

24 "Remedial investigation" means a process to determine the nature  
25 and extent of a discharge of hazardous substances or hazardous wastes  
26 at an industrial establishment or a discharge of hazardous substances  
27 or hazardous wastes that have migrated or are migrating from the site  
28 and the problems presented by a discharge, and may include data  
29 collection, site characterization, sampling, monitoring, and the  
30 gathering of any other sufficient and relevant information necessary to  
31 determine the necessity for remedial action and to support the  
32 evaluation of remedial actions if necessary;

33 "Response action outcome" means a written determination by a  
34 licensed site remediation professional that the contaminated site was  
35 remediated in accordance with all applicable statutes and regulations,  
36 and based upon an evaluation of the historical use of the site, or of any  
37 area of concern at that site, as applicable, and any other investigation  
38 or action the department deems necessary, there are no contaminants  
39 present at the site, or at any area of concern, at any other site to which  
40 a discharge originating at the site has migrated, or that any  
41 contaminants present at the site or that have migrated from the site  
42 have been remediated in accordance with applicable remediation  
43 regulations, and all applicable permits and authorizations have been  
44 obtained;

45 "Site investigation" means the collection and evaluation of data  
46 adequate to determine whether or not discharged hazardous substances  
47 or hazardous wastes exist at the industrial establishment or have  
48 migrated or are migrating from the site at levels in excess of the

1 applicable remediation standards. A site investigation shall be  
2 developed based upon the information collected pursuant to the  
3 preliminary assessment.

4 (cf: P.L.2009, c.60, s.33)

5  
6 2. Section 1 of P.L.1995, c.139 (C.2A:53A-26) is amended to  
7 read as follows:

8 1. As used in this act, "licensed person" means any person who  
9 is licensed as:

10 a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-  
11 42 et seq.);

12 b. an architect pursuant to R.S.45:3-1 et seq.;

13 c. an attorney admitted to practice law in New Jersey;

14 d. a dentist pursuant to R.S.45:6-1 et seq.;

15 e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);

16 f. a physician in the practice of medicine or surgery pursuant  
17 to R.S.45:9-1 et seq.;

18 g. a podiatrist pursuant to R.S.45:5-1 et seq.;

19 h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-  
20 41.17 et seq.);

21 i. a registered professional nurse pursuant to P.L.1947, c.262  
22 (C.45:11-23 et seq.);

23 j. a health care facility as defined in section 2 of P.L.1971,  
24 c.136 (C.26:2H-2);

25 k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-  
26 37.11 et seq.);

27 l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-  
28 27 et seq.);

29 m. a registered pharmacist pursuant to P.L.2003, c.280  
30 (C.45:14-40 et seq.);

31 n. a veterinarian pursuant to R.S.45:16-1 et seq.;

32 o. an insurance producer pursuant to P.L.2001, c.210  
33 (C.17:22A-26 et seq.); **【and】**

34 p. a certified midwife, certified professional midwife, or  
35 certified nurse midwife pursuant to R.S.45:10-1 et seq.; and

36 q. a licensed site remediation professional pursuant to section 7  
37 of P.L.2009, c.60 (C.58:10C-7).

38 (cf: P.L.2010, c.88, s.1)

39  
40 3. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to  
41 read as follows:

42 3. Unless the context clearly indicates otherwise, the following  
43 terms shall have the following meanings:

44 "Act of God" means an act exclusively occasioned by an  
45 unanticipated, grave natural disaster without the interference of any  
46 human agency;

47 "Administrator" means the chief executive of the New Jersey  
48 Spill Compensation Fund;

1 "Barrel" means 42 United States gallons or 159.09 liters or an  
2 appropriate equivalent measure set by the director for hazardous  
3 substances which are other than fluid or which are not commonly  
4 measured by the barrel;

5 "Board" means a board of arbitration convened by the  
6 administrator to settle disputed disbursements from the fund;

7 "Cleanup and removal costs" means all direct costs associated  
8 with a discharge, and those indirect costs that may be imposed by  
9 the department pursuant to section 1 of P.L.2002, c.37 associated  
10 with a discharge, incurred by the State or its political subdivisions  
11 or their agents or any person with written approval from the  
12 department in the: (1) removal or attempted removal of hazardous  
13 substances, or (2) taking of reasonable measures to prevent or  
14 mitigate damage to the public health, safety, or welfare, including,  
15 but not limited to, public and private property, shorelines, beaches,  
16 surface waters, water columns and bottom sediments, soils and  
17 other affected property, including wildlife and other natural  
18 resources, and shall include costs incurred by the State for the  
19 indemnification and legal defense of contractors pursuant to  
20 sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.);

21 "Commissioner" means the Commissioner of Environmental  
22 Protection;

23 "Contamination" or "contaminant" means any discharged  
24 hazardous substance, hazardous waste as defined pursuant to  
25 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
26 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

27 "Department" means the Department of Environmental  
28 Protection;

29 "Director" means the Director of the Division of Taxation in the  
30 Department of the Treasury;

31 "Discharge" means any intentional or unintentional action or  
32 omission resulting in the releasing, spilling, leaking, pumping,  
33 pouring, emitting, emptying or dumping of hazardous substances  
34 into the waters or onto the lands of the State, or into waters outside  
35 the jurisdiction of the State when damage may result to the lands,  
36 waters or natural resources within the jurisdiction of the State;

37 "Emergency response action" means those activities conducted  
38 by a local unit to clean up, remove, prevent, contain, or mitigate a  
39 discharge that poses an immediate threat to the environment or to  
40 the public health, safety, or welfare;

41 "Fair market value" means the invoice price of the hazardous  
42 substances transferred, including transportation charges; but where  
43 no price is so fixed, "fair market value" shall mean the market price  
44 as of the close of the nearest day to the transfer, paid for similar  
45 hazardous substances, as shall be determined by the taxpayer  
46 pursuant to rules of the director;

47 "Final remediation document" means a no further action letter  
48 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-  
49 1 et al.), or a response action outcome issued by a licensed site



1 remediation professional pursuant to section 14 of P.L.2009, c.60  
2 (C.58:10C-14);

3 "Fund" means the New Jersey Spill Compensation Fund;

4 "Hazardous substances" means the "environmental hazardous  
5 substances" on the environmental hazardous substance list adopted  
6 by the department pursuant to section 4 of P.L.1983, c.315  
7 (C.34:5A-4); such elements and compounds, including petroleum  
8 products, which are defined as such by the department, after public  
9 hearing, and which shall be consistent to the maximum extent  
10 possible with, and which shall include, the list of hazardous  
11 substances adopted by the federal Environmental Protection Agency  
12 pursuant to section 311 of the Federal Water Pollution Control Act  
13 Amendments of 1972, Pub.L.92-500, as amended by the Clean  
14 Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list  
15 of toxic pollutants designated by Congress or the **[EPA]** United  
16 States Environmental Protection Agency pursuant to section 307 of  
17 that act; and the list of hazardous substances adopted by the federal  
18 Environmental Protection Agency pursuant to section 101 of the  
19 "Comprehensive Environmental Response, Compensation and  
20 Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.);  
21 provided, however, that sewage and sewage sludge shall not be  
22 considered as hazardous substances for the purposes of P.L.1976,  
23 c.141 (C.58:10-23.11 et seq.);

24 "Licensed site remediation professional" means an individual  
25 who is licensed by the Site Remediation Professional Licensing  
26 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the  
27 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

28 "Local unit" means any county or municipality, or any agency or  
29 other instrumentality thereof, or a duly incorporated volunteer fire,  
30 ambulance, first aid, emergency, or rescue company or squad;

31 "Major facility" includes, but is not limited to, any refinery,  
32 storage or transfer terminal, pipeline, deep-water port, drilling  
33 platform or any appurtenance related to any of the preceding that is  
34 used or is capable of being used to refine, produce, store, handle,  
35 transfer, process or transport hazardous substances. "Major  
36 facility" shall include a vessel only when that vessel is engaged in a  
37 transfer of hazardous substances between it and another vessel, and  
38 in any event shall not include a vessel used solely for activities  
39 directly related to recovering, containing, cleaning up or removing  
40 discharges of petroleum in the surface waters of the State, including  
41 training, research, and other activities directly related to spill  
42 response.

43 A facility shall not be considered a major facility for the purpose  
44 of P.L.1976, c.141 unless it has total combined aboveground or  
45 buried storage capacity of:

46 (1) 20,000 gallons or more for hazardous substances which are  
47 other than petroleum or petroleum products, or

48 (2) 200,000 gallons or more for hazardous substances of all  
49 kinds.

1 In determining whether a facility is a major facility for the  
2 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any  
3 underground storage tank at the facility used solely to store heating  
4 oil for on-site consumption shall not be considered when  
5 determining the combined storage capacity of the facility.

6 For the purposes of this definition, "storage capacity" shall mean  
7 only that total combined capacity which is dedicated to, used for or  
8 intended to be used for storage of hazardous substances of all kinds.  
9 Where appropriate to the nature of the facility, storage capacity may  
10 be determined by the intended or actual use of open land or  
11 unenclosed space as well as by the capacities of tanks or other  
12 enclosed storage spaces;

13 "Natural resources" means all land, fish, shellfish, wildlife, biota,  
14 air, waters and other such resources owned, managed, held in trust  
15 or otherwise controlled by the State;

16 "Owner" or "operator" means, with respect to a vessel, any  
17 person owning, operating or chartering by demise such vessel; with  
18 respect to any major facility, any person owning such facility, or  
19 operating it by lease, contract or other form of agreement; with  
20 respect to abandoned or derelict major facilities, the person who  
21 owned or operated such facility immediately prior to such  
22 abandonment, or the owner at the time of discharge;

23 "Person" means public or private corporations, companies,  
24 associations, societies, firms, partnerships, joint stock companies,  
25 individuals, the United States, the State of New Jersey and any of  
26 its political subdivisions or agents;

27 "Person responsible for conducting the remediation" means (1)  
28 any person who executes or is otherwise subject to an oversight  
29 document to remediate a contaminated site, (2) the owner or  
30 operator of an industrial establishment subject to P.L.1983, c.330  
31 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner  
32 or operator of an underground storage tank subject to P.L.1986,  
33 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)  
34 any other person who discharges a hazardous substance or is in any  
35 way responsible for a hazardous substance, pursuant to section 8 of  
36 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a  
37 contaminated site, or (5) any other person who is remediating a site;

38 "Petroleum" or "petroleum products" means oil or petroleum of  
39 any kind and in any form, including, but not limited to, oil,  
40 petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil  
41 mixed with other wastes, crude oils, and substances or additives to  
42 be utilized in the refining or blending of crude petroleum or  
43 petroleum stock in this State; however, any compound designated  
44 by specific chemical name on the list of hazardous substances  
45 adopted by the department pursuant to this section shall not be  
46 considered petroleum or a petroleum product for the purposes of  
47 P.L.1976, c.141, unless such compound is to be utilized in the  
48 refining or blending of crude petroleum or petroleum stock in this  
49 State;

1 "Preliminary assessment" means the first phase in the process of  
2 identifying areas of concern and determining whether contaminants  
3 are or were present at a site or have migrated or are migrating from  
4 a site, and shall include the initial search for and evaluation of,  
5 existing site specific operational and environmental information,  
6 both current and historic, to determine if further investigation  
7 concerning the documented, alleged, suspected or latent discharge  
8 of any contaminant is required. The evaluation of historic  
9 information shall be conducted from 1932 to the present, except that  
10 the department may require the search for and evaluation of  
11 additional information relating to ownership and use of the site  
12 prior to 1932 if such information is available through diligent  
13 inquiry of the public records;

14 "Remedial action" means those actions taken at a site or offsite if  
15 a contaminant has migrated or is migrating therefrom, as may be  
16 required by the department, including the removal, treatment,  
17 containment, transportation, securing, or other engineering or  
18 treatment measures, whether to an unrestricted use or otherwise,  
19 designed to ensure that any discharged contaminant at the site or  
20 that has migrated or is migrating from the site, is remediated in  
21 compliance with the applicable health risk or environmental  
22 standards;

23 "Remedial investigation" means a process to determine the  
24 nature and extent of a discharge of a contaminant at a site or a  
25 discharge of a contaminant that has migrated or is migrating from  
26 the site and the problems presented by a discharge, and may include  
27 data collected, site characterization, sampling, monitoring, and the  
28 gathering of any other sufficient and relevant information necessary  
29 to determine the necessity for remedial action and to support the  
30 evaluation of remedial actions if necessary;

31 "Remediation" or "remediate" means all **【necessary】** actions to  
32 investigate **【and】** , clean up , or respond to any known, suspected,  
33 or threatened discharge, including **【, as necessary,】** the preliminary  
34 assessment, site investigation, remedial investigation, and remedial  
35 action, or any portion thereof, provided, however, that  
36 "remediation" or "remediate" shall not include the payment of  
37 compensation for damage to, or loss of, natural resources;

38 "Response action outcome" means a written determination by a  
39 licensed site remediation professional that the contaminated site  
40 was remediated in accordance with all applicable statutes and  
41 regulations, and based upon an evaluation of the historical use of  
42 the site, or of any area of concern at that site, as applicable, and any  
43 other investigation or action the department deems necessary, there  
44 are no contaminants present at the site, or at any area of concern, at  
45 any other site to which a discharge originating at the site has  
46 migrated, or that any contaminants present at the site or that have  
47 migrated from the site have been remediated in accordance with

1 applicable remediation regulations, and all applicable permits and  
2 authorizations have been obtained;

3 "Site investigation" means the collection and evaluation of data  
4 adequate to determine whether or not discharged contaminants exist  
5 at a site or have migrated or are migrating from the site at levels in  
6 excess of the applicable remediation standards. A site investigation  
7 shall be developed based upon the information collected pursuant to  
8 the preliminary assessment;

9 "Taxpayer" means the owner or operator of a major facility  
10 subject to the tax provisions of P.L.1976, c.141;

11 "Tax period" means every calendar month on the basis of which  
12 the taxpayer is required to report under P.L.1976, c.141;

13 "Transfer" means onloading or offloading between major  
14 facilities and vessels, or vessels and major facilities, and from  
15 vessel to vessel or major facility to major facility, except for fueling  
16 or refueling operations and except that with regard to the movement  
17 of hazardous substances other than petroleum, it shall also include  
18 any onloading of or offloading from a major facility;

19 "Vessel" means every description of watercraft or other  
20 contrivance that is practically capable of being used as a means of  
21 commercial transportation of hazardous substances upon the water,  
22 whether or not self-propelled;

23 "Waters" means the ocean and its estuaries to the seaward limit  
24 of the State's jurisdiction, all springs, streams and bodies of surface  
25 or groundwater, whether natural or artificial, within the boundaries  
26 of this State.

27 (cf: P.L.2009, c.60, s.35)

28

29 4. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
30 read as follows:

31 8. a. The fund shall be strictly liable, without regard to fault,  
32 for all cleanup and removal costs and for all direct and indirect  
33 damages no matter by whom sustained, including but not limited to:

34 (1) The cost of restoring, repairing, or replacing any real or  
35 personal property damaged or destroyed by a discharge, any income  
36 lost from the time such property is damaged to the time such  
37 property is restored, repaired or replaced, and any reduction in  
38 value of such property caused by such discharge by comparison  
39 with its value prior thereto;

40 (2) The cost of restoration and replacement, where possible, of  
41 any natural resource damaged or destroyed by a discharge;

42 (3) Loss of income or impairment of earning capacity due to  
43 damage to real or personal property, including natural resources  
44 destroyed or damaged by a discharge; provided that such loss or  
45 impairment exceeds 10 **【%】** percent of the amount which claimant  
46 derives, based upon income or business records, exclusive of other  
47 sources of income, from activities related to the particular real or  
48 personal property or natural resources damaged or destroyed by

1 such discharge during the week, month or year for which the claim  
2 is filed;

3 (4) Loss of tax revenue by the State or local governments for a  
4 period of one year due to damage to real or personal property  
5 proximately resulting from a discharge;

6 (5) Interest on loans obtained or other obligations incurred by a  
7 claimant for the purpose of ameliorating the adverse effects of a  
8 discharge pending the payment of a claim in full as provided by this  
9 act.

10 b. The damages which may be recovered by the fund, without  
11 regard to fault, subject to the defenses enumerated in subsection d.  
12 of this section against the owner or operator of a major facility or  
13 vessel, shall not exceed \$50,000,000.00 for each major facility or  
14 \$1,200 per gross ton for each vessel, except that such maximum  
15 limitation shall not apply and the owner or operator shall be liable,  
16 jointly and severally, for the full amount of such damages if it can  
17 be shown that such discharge was the result of (1) gross negligence  
18 or willful misconduct, within the knowledge and privity of the  
19 owner, operator or person in charge, or (2) a gross or willful  
20 violation of applicable safety, construction or operating standards or  
21 regulations. Damages which may be recovered from, or by, any  
22 other person shall be limited to those authorized by common or  
23 statutory law.

24 c. (1) Except as provided in section 2 of P.L.2005, c.43  
25 (C.58:10-23.11g12), any person who has discharged a hazardous  
26 substance, or is in any way responsible for any hazardous  
27 substance, shall be strictly liable, jointly and severally, without  
28 regard to fault, for all cleanup and removal costs no matter by  
29 whom incurred. Such person shall also be strictly liable, jointly and  
30 severally, without regard to fault, for all cleanup and removal costs  
31 incurred by the department or a local unit pursuant to subsection b.  
32 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

33 (2) In addition to the persons liable pursuant to this subsection,  
34 in the case of a discharge of a hazardous substance from a vessel  
35 into the waters of the State, the owner or operator of a refinery,  
36 storage, transfer, or pipeline facility to which the vessel was en  
37 route to deliver the hazardous substance who, by contract,  
38 agreement, or otherwise, was scheduled to assume ownership of the  
39 discharged hazardous substance, and any other person who was so  
40 scheduled to assume ownership of the discharged hazardous  
41 substance, shall be strictly liable, jointly and severally, without  
42 regard to fault, for all cleanup and removal costs if the owner or  
43 operator of the vessel did not have the evidence of financial  
44 responsibility required pursuant to section 2 of P.L.1991, c.58  
45 (C.58:10-23.11g2).

46 Where a person is liable for cleanup and removal costs as  
47 provided in this paragraph, any expenditures made by the  
48 administrator for that cleanup and removal shall constitute a debt of  
49 that person to the fund. The debt shall constitute a lien on all

1 property owned by that person when a notice of lien identifying the  
2 nature of the discharge and the amount of the cleanup, removal and  
3 related costs expended from the fund is duly filed with the clerk of  
4 the Superior Court. The clerk shall promptly enter upon the civil  
5 judgment or order docket the name and address of the liable person  
6 and the amount of the lien as set forth in the notice of lien. Upon  
7 entry by the clerk, the lien, to the amount committed by the  
8 administrator for cleanup and removal, shall attach to the revenues  
9 and all real and personal property of the liable person, whether or  
10 not that person is insolvent.

11 For the purpose of determining priority of this lien over all other  
12 claims or liens which are or have been filed against the property of  
13 an owner or operator of a refinery, storage, transfer, or pipeline  
14 facility, the lien on the facility to which the discharged hazardous  
15 substance was en route shall have priority over all other claims or  
16 liens which are or have been filed against the property. The notice  
17 of lien filed pursuant to this paragraph which affects any property  
18 of a person liable pursuant to this paragraph other than the property  
19 of an owner or operator of a refinery, storage, transfer, or pipeline  
20 facility to which the discharged hazardous substance was en route,  
21 shall have priority from the day of the filing of the notice of the lien  
22 over all claims and liens filed against the property, but shall not  
23 affect any valid lien, right, or interest in the property filed in  
24 accordance with established procedure prior to the filing of a notice  
25 of lien pursuant to this paragraph.

26 To the extent that a person liable pursuant to this paragraph is  
27 not otherwise liable pursuant to paragraph (1) of this subsection, or  
28 under any other provision of law or under common law, that person  
29 may bring an action for indemnification for costs paid pursuant to  
30 this paragraph against any other person who is strictly liable  
31 pursuant to paragraph (1) of this subsection.

32 Nothing in this paragraph shall be construed to extend or negate  
33 the right of any person to bring an action for contribution that may  
34 exist under P.L.1976, c.141, or any other act or under common law.

35 (3) In addition to the persons liable pursuant to this subsection,  
36 any person who owns real property acquired on or after September  
37 14, 1993 on which there has been a discharge prior to the person's  
38 acquisition of that property and who knew or should have known  
39 that a hazardous substance had been discharged at the real property,  
40 shall be strictly liable, jointly and severally, without regard to fault,  
41 for all cleanup and removal costs no matter by whom incurred.  
42 Such person shall also be strictly liable, jointly and severally,  
43 without regard to fault, for all cleanup and removal costs incurred  
44 by the department or a local unit pursuant to subsection b. of  
45 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
46 paragraph shall be construed to alter liability of any person who  
47 acquired real property prior to September 14, 1993.

48 d. (1) In addition to those defenses provided in this  
49 subsection, an act or omission caused solely by war, sabotage, or

1 God, or a combination thereof, shall be the only defenses which  
2 may be raised by any owner or operator of a major facility or vessel  
3 responsible for a discharge in any action arising under the  
4 provisions of this act.

5 (2) A person, including an owner or operator of a major facility,  
6 who owns real property acquired on or after September 14, 1993 on  
7 which there has been a discharge, shall not be liable for cleanup and  
8 removal costs or for any other damages to the State or to any other  
9 person for the discharged hazardous substance pursuant to  
10 subsection c. of this section or pursuant to civil common law, if that  
11 person can establish by a preponderance of the evidence that  
12 subparagraphs (a) through (d) apply, or if applicable, subparagraphs  
13 (a) through (e) apply:

14 (a) the person acquired the real property after the discharge of  
15 that hazardous substance at the real property;

16 (b) (i) at the time the person acquired the real property, the  
17 person did not know and had no reason to know that any hazardous  
18 substance had been discharged at the real property, or (ii) the person  
19 acquired the real property by devise or succession, except that any  
20 other funds or property received by that person from the deceased  
21 real property owner who discharged a hazardous substance or was  
22 in any way responsible for a hazardous substance, shall be made  
23 available to satisfy the requirements of P.L.1976, c.141, or (iii) the  
24 person complies with the provisions of subparagraph (e) of  
25 paragraph (2) of this subsection;

26 (c) the person did not discharge the hazardous substance, is not  
27 in any way responsible for the hazardous substance, and is not a  
28 corporate successor to the discharger or to any person in any way  
29 responsible for the hazardous substance or to anyone liable for  
30 cleanup and removal costs pursuant to this section;

31 (d) the person gave notice of the discharge to the department  
32 upon actual discovery of that discharge.

33 To establish that a person had no reason to know that any  
34 hazardous substance had been discharged for the purposes of this  
35 paragraph (2), the person must have undertaken, at the time of  
36 acquisition, all appropriate inquiry into the previous ownership and  
37 uses of the property. For the purposes of this paragraph (2), all  
38 appropriate inquiry shall mean the performance of a preliminary  
39 assessment, and site investigation, if the preliminary assessment  
40 indicates that a site investigation is necessary, as defined in section  
41 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
42 with rules and regulations promulgated by the department defining  
43 these terms.

44 Nothing in this paragraph (2) shall be construed to alter liability  
45 of any person who acquired real property prior to September 14,  
46 1993; and

47 (e) For the purposes of this subparagraph the person must have  
48 (i) acquired the property subsequent to a hazardous substance being  
49 discharged on the site and which discharge was discovered at the

1 time of acquisition as a result of the appropriate inquiry, as defined  
2 in this paragraph (2), (ii) performed, following the effective date of  
3 P.L.1997, c.278, a remediation of the site or discharge consistent  
4 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),  
5 or, relied upon a valid final remediation document for a remediation  
6 performed prior to acquisition, or, obtained a remedial action  
7 workplan certified by a licensed site remediation professional  
8 retained for the site after the date of enactment of P.L.2009, c.60  
9 (C.58:10C-1 et al.) and continued to comply with the conditions of  
10 that workplan, or obtained approval of a remedial action workplan  
11 by the department after the effective date of P.L.1997, c.278 and  
12 continued to comply with the conditions of that workplan, and (iii)  
13 established and maintained all engineering and institutional controls  
14 as may be required pursuant to sections 35 and 36 of P.L.1993,  
15 c.139. A person who complies with the provisions of this  
16 subparagraph by actually performing a remediation of the site or  
17 discharge as set forth in (ii) above shall be issued, upon application,  
18 a no further action letter by the department or a response action  
19 outcome by a licensed site remediation professional, as applicable.  
20 A person who complies with the provisions of this subparagraph  
21 either by receipt of a final remediation document following the  
22 effective date of P.L.1997, c.278, or by relying on a previously  
23 issued final remediation document shall not be liable for any further  
24 remediation including any changes in a remediation standard or for  
25 the subsequent discovery of a hazardous substance, at the site, or  
26 emanating from the site, if the remediation was for the entire site,  
27 and the hazardous substance was discharged prior to the person  
28 acquiring the property. Notwithstanding any other provisions of  
29 this subparagraph, a person who complies with the provisions of  
30 this subparagraph only by virtue of the existence of a previously  
31 issued final remediation document shall receive no liability  
32 protections for any discharge which occurred during the time period  
33 between the issuance of the final remediation document and the  
34 property acquisition. Compliance with the provisions of this  
35 subparagraph (e) shall not relieve any person of any liability for a  
36 discharge that is off the site of the property covered by the final  
37 remediation document, for a discharge that occurs at that property  
38 after the person acquires the property, for any actions that person  
39 negligently takes that aggravates or contributes to a discharge of a  
40 hazardous substance, for failure to comply in the future with laws  
41 and regulations, or if that person fails to maintain the institutional  
42 or engineering controls on the property or to otherwise comply with  
43 the provisions of the final remediation document.

44 (3) Notwithstanding the provisions of paragraph (2) of this  
45 subsection to the contrary, if a person who owns real property  
46 obtains actual knowledge of a discharge of a hazardous substance at  
47 the real property during the period of that person's ownership and  
48 subsequently transfers ownership of the property to another person  
49 without disclosing that knowledge, the transferor shall be strictly



1 liable for the cleanup and removal costs of the discharge and no  
2 defense under this subsection shall be available to that person.

3 (4) Any federal, State, or local governmental entity which  
4 acquires ownership of real property through bankruptcy, tax  
5 delinquency, abandonment, escheat, eminent domain, condemnation  
6 or any circumstance in which the governmental entity involuntarily  
7 acquires title by virtue of its function as sovereign, or where the  
8 governmental entity acquires the property by any means for the  
9 purpose of promoting the redevelopment of that property, shall not  
10 be liable, pursuant to subsection c. of this section or pursuant to  
11 common law, to the State or to any other person for any discharge  
12 which occurred or began prior to that ownership. This paragraph  
13 shall not provide any liability protection to any federal, State or  
14 local governmental entity which has caused or contributed to the  
15 discharge of a hazardous substance. This paragraph shall not  
16 provide any liability protection to any federal, State, or local  
17 government entity that acquires ownership of real property by  
18 condemnation or eminent domain where the real property is being  
19 remediated in a timely manner at the time of the condemnation or  
20 eminent domain action.

21 (5) A person, including an owner or operator of a major facility,  
22 who owns real property acquired prior to September 14, 1993 on  
23 which there has been a discharge, shall not be liable for cleanup and  
24 removal costs or for any other damages to the State or to any other  
25 person for the discharged hazardous substance pursuant to  
26 subsection c. of this section or pursuant to civil common law, if that  
27 person can establish by a preponderance of the evidence that  
28 subparagraphs (a) through (d) apply:

29 (a) the person acquired the real property after the discharge of  
30 that hazardous substance at the real property;

31 (b) (i) at the time the person acquired the real property, the  
32 person did not know and had no reason to know that any hazardous  
33 substance had been discharged at the real property, or (ii) the person  
34 acquired the real property by devise or succession, except that any  
35 other funds or property received by that person from the deceased  
36 real property owner who discharged a hazardous substance or was  
37 in any way responsible for a hazardous substance, shall be made  
38 available to satisfy the requirements of P.L.1976, c.141;

39 (c) the person did not discharge the hazardous substance, is not  
40 in any way responsible for the hazardous substance, and is not a  
41 corporate successor to the discharger or to any person in any way  
42 responsible for the hazardous substance or to anyone liable for  
43 cleanup and removal costs pursuant to this section;

44 (d) the person gave notice of the discharge to the department  
45 upon actual discovery of that discharge.

46 To establish that a person had no reason to know that any  
47 hazardous substance had been discharged for the purposes of this  
48 paragraph (5), the person must have undertaken, at the time of  
49 acquisition, all appropriate inquiry on the previous ownership and

1 uses of the property based upon generally accepted good and  
2 customary standards.

3 Nothing in this paragraph (5) shall be construed to alter liability  
4 of any person who acquired real property on or after September 14,  
5 1993.

6 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
7 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall  
8 be liable for any damages incurred by any person who is relieved  
9 from liability pursuant to subsection d. or f. of this section for a  
10 remediation that involves the use of engineering controls but the  
11 fund and the Sanitary Landfill Contingency Fund shall be liable for  
12 any remediation that involves only the use of institutional controls  
13 if after a valid final remediation document has been issued the  
14 department orders additional remediation except that the fund and  
15 the Sanitary Landfill Contingency Fund shall not be liable for any  
16 additional remediation that is required to remove an institutional  
17 control.

18 f. Notwithstanding any other provision of this section, a  
19 person, who owns real property acquired on or after the effective  
20 date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for  
21 any cleanup and removal costs or damages, under this section or  
22 pursuant to any other statutory or civil common law, to any person,  
23 other than the State and the federal government, harmed by any  
24 hazardous substance discharged on that property prior to  
25 acquisition, and any migration off that property related to that  
26 discharge, provided all the conditions of this subsection are met:

27 (1) the person acquired the real property after the discharge of  
28 that hazardous substance at the real property;

29 (2) the person did not discharge the hazardous substance, is not  
30 in any way responsible for the hazardous substance, and is not a  
31 corporate successor to the discharger or to any person in any way  
32 responsible for the hazardous substance or to anyone liable for a  
33 discharge pursuant to this section;

34 (3) the person gave notice of the discharge to the department  
35 upon actual discovery of that discharge;

36 (4) (a) within 30 days after acquisition of the property, the  
37 person commenced a remediation of the discharge, including any  
38 migration, pursuant to a department oversight document executed  
39 prior to acquisition, or (b) for property acquired after the date of  
40 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person  
41 provides written notice of the acquisition to the department prior to  
42 or on the date of acquisition and the person remediates the property  
43 pursuant to the provisions of section 30 of P.L.2009, c.60  
44 (C.58:10B-1.3), and (c) the department is satisfied that remediation  
45 was completed in a timely and appropriate fashion; and

46 (5) Within ten days after acquisition of the property, or within  
47 30 days after the expiration of the period or periods allowed for the  
48 right of redemption pursuant to tax foreclosure law, the person

1 agrees in writing to provide access to the State for remediation and  
2 related activities, as determined by the State.

3 The provisions of this subsection shall not relieve any person of  
4 any liability:

5 (1) for a discharge that occurs at that property after the person  
6 acquired the property;

7 (2) for any actions that person negligently takes that aggravates  
8 or contributes to the harm inflicted upon any person;

9 (3) if that person fails to maintain the institutional or  
10 engineering controls on the property or to otherwise comply with  
11 the provisions of a final remediation document or a remedial action  
12 workplan and a person is harmed thereby;

13 (4) for any liability to clean up and remove, pursuant to the  
14 department's regulations and directions, any hazardous substances  
15 that may have been discharged on the property or that may have  
16 migrated therefrom; and

17 (5) for that person's failure to comply in the future with laws  
18 and regulations.

19 g. Nothing in the amendatory provisions to this section adopted  
20 pursuant to P.L.1997, c.278 shall be construed to remove any  
21 defense to liability that a person may have had pursuant to  
22 subsection e. of this section that existed prior to the effective date  
23 of P.L.1997, c.278.

24 h. Nothing in this section shall limit the requirements of any  
25 person to comply with P.L.1983, c.330 (C.13:1K-6 et al.).  
26 (cf: P.L.2009, c.60, s.38)

27  
28 5. Section 22 of P.L.1976, c.141 (C.58:10-23.11u) is amended  
29 to read as follows:

30 22. a. (1) Whenever, on the basis of available information, the  
31 department determines that a person is in violation of a provision of  
32 P.L.1976, c.141 (C.58:10-23.11 et seq.), including any rule,  
33 regulation, plan, information request, access request, order or  
34 directive promulgated or issued pursuant thereto, or that a person  
35 knowingly has given false testimony, documents or information to  
36 the department, the department may:

37 (a) bring a civil action in accordance with subsection b. of this  
38 section;

39 (b) levy a civil administrative penalty in accordance with  
40 subsection c. of this section; or

41 (c) bring an action for a civil penalty in accordance with  
42 subsection d. of this section.

43 Use of any remedy specified in this section shall not preclude use  
44 of any other remedy. The department may simultaneously pursue  
45 administrative and judicial remedies provided in this section.

46 b. The department may commence a civil action in Superior  
47 Court for, singly or in combination:

48 (1) a temporary or permanent injunction;

1 (2) the costs of any investigation, cleanup or removal, and for  
2 the reasonable costs of preparing and successfully litigating an  
3 action under this subsection;

4 (3) the cost of restoring, repairing, or replacing real or personal  
5 property damaged or destroyed by a discharge, any income lost  
6 from the time the property is damaged to the time it is restored,  
7 repaired or replaced, and any reduction in value of the property  
8 caused by the discharge by comparison with its value prior thereto;

9 (4) the cost of restoration and replacement, where practicable, of  
10 any natural resource damaged or destroyed by a discharge; and

11 (5) any other costs incurred by the department pursuant to  
12 P.L.1976, c.141.

13 Compensatory damages for damages awarded to a person other  
14 than the State shall be paid to the person injured by the discharge.

15 c. (1) The department may assess a civil administrative  
16 penalty of not more than \$50,000 for each violation, and each day  
17 of violation shall constitute an additional, separate and distinct  
18 violation. A civil administrative penalty shall not be levied until a  
19 violator has been notified by certified mail or personal service of:

20 (a) the statutory or regulatory basis of the violation;

21 (b) the specific citation of the act or omission constituting the  
22 violation;

23 (c) the amount of the civil administrative penalty to be imposed;

24 (d) the right of the violator to a hearing on any matter contained  
25 in the notice and the procedures for requesting a hearing.

26 (2) (a) A violator shall have 20 calendar days following receipt  
27 of notice within which to request a hearing on any matter contained  
28 in the notice, and shall comply with all procedures for requesting a  
29 hearing. Failure to submit a timely request or to comply with all  
30 departmental procedures shall constitute grounds for denial of a  
31 hearing request. After a hearing and upon a finding that a violation  
32 has occurred, the department shall issue a final order assessing the  
33 amount of the civil administrative penalty specified in the notice. If  
34 a violator does not request a hearing or fails to satisfy the statutory  
35 and administrative requirements for requesting a hearing, the notice  
36 of assessment of a civil administrative penalty shall become a final  
37 order on the 21st calendar day following receipt of the notice by the  
38 violator. If the department denies a hearing request, the notice of  
39 denial shall become a final order upon receipt of the notice by the  
40 violator.

41 (b) A civil administrative penalty may be settled by the  
42 department on such terms and conditions as the department may  
43 determine.

44 (c) Payment of a civil administrative penalty shall not be  
45 deemed to affect the availability of any other enforcement remedy  
46 in connection with the violation for which the penalty was levied.

47 (3) If a civil administrative penalty imposed pursuant to this  
48 section is not paid within 30 days of the date that the penalty is due  
49 and owing, and the penalty is not contested by the person against

1 whom the penalty has been assessed, or the person fails to make a  
2 payment pursuant to a payment schedule entered into with the  
3 department, an interest charge shall accrue on the amount of the  
4 penalty from the 30th day that amount was due and owing. In the  
5 case of an appeal of a civil administrative penalty, if the amount of  
6 the penalty is upheld, in whole or in part, the rate of interest shall be  
7 calculated on that amount as of the 30th day from the date the  
8 amount was due and owing under the administrative order. The rate  
9 of interest shall be that established by the New Jersey Supreme  
10 Court for interest rates on judgments, as set forth in the Rules  
11 Governing the Courts of the State of New Jersey.

12 (4) The department may assess and recover, by civil  
13 administrative order, the costs of any investigation, cleanup or  
14 removal, and the reasonable costs of preparing and successfully  
15 enforcing a civil administrative penalty pursuant to this subsection.  
16 The assessment may be recovered at the same time as a civil  
17 administrative penalty, and shall be in addition to the penalty  
18 assessment.

19 d. Any person who violates a provision of P.L.1976, c.141  
20 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or  
21 who fails to pay a civil administrative penalty in full or to agree to a  
22 schedule of payments therefor, shall be subject to a civil penalty not  
23 to exceed \$50,000.00 per day for each violation, and each day's  
24 continuance of the violation shall constitute a separate violation.  
25 Any penalty incurred under this subsection may be recovered with  
26 costs in a summary proceeding pursuant to **["the penalty**  
27 **enforcement law"** (N.J.S.2A:58-1 et seq.)**】** the "Penalty  
28 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in  
29 the Superior Court or a municipal court. The Superior Court and  
30 the municipal courts shall have jurisdiction to impose a civil penalty  
31 for a violation of P.L.1976, c.141 (C.58:10-23.11 et seq.) pursuant  
32 to this subsection and in accordance with the procedures set forth in  
33 the "Penalty Enforcement Law of 1999."

34 e. All conveyances used or intended for use in the willful  
35 discharge of any hazardous substance are subject to forfeiture to the  
36 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-  
37 1 et seq.).  
38 (cf: P.L.1990, c.75, s.1)  
39

40 6. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to  
41 read as follows:

42 23. As used in sections 23 through 43 and section 45 of  
43 P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and  
44 supplemented:

45 "Area of concern" means any location where contaminants are or  
46 were known or suspected to have been discharged, generated,  
47 manufactured, refined, transported, stored, handled, treated, or  
48 disposed, or where contaminants have or may have migrated;

1 "Authority" means the New Jersey Economic Development  
2 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
3 seq.);

4 "Brownfield development area" means an area that has been so  
5 designated by the department, in writing, pursuant to the provisions  
6 of section 7 of P.L.2005, c.223 (C.58:10B-25.1);

7 "Brownfield site" means any former or current commercial or  
8 industrial site that is currently vacant or underutilized and on which  
9 there has been, or there is suspected to have been, a discharge of a  
10 contaminant;

11 "Contamination" or "contaminant" means any discharged  
12 hazardous substance as defined pursuant to section 3 of P.L.1976,  
13 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
14 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
15 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

16 "Department" means the Department of Environmental  
17 Protection;

18 "Discharge" means an intentional or unintentional action or  
19 omission resulting in the releasing, spilling, leaking, pumping,  
20 pouring, emitting, emptying, or dumping of a contaminant onto the  
21 land or into the waters of the State;

22 "Engineering controls" means any mechanism to contain or  
23 stabilize contamination or ensure the effectiveness of a remedial  
24 action. Engineering controls may include, without limitation, caps,  
25 covers, dikes, trenches, leachate collection systems, signs, fences  
26 and physical access controls;

27 "Environmental opportunity zone" has the meaning given that  
28 term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

29 "Final remediation document" means a no further action letter  
30 issued by the department pursuant to P.L.1993, c.139 (C.58:10B-1  
31 et al.), or a response action outcome issued by a licensed site  
32 remediation professional pursuant to section 14 of P.L.2009, c.60  
33 (C.58:10C-14);

34 "Financial assistance" means loans or loan guarantees;

35 "Institutional controls" means a mechanism used to limit human  
36 activities at or near a contaminated site, or to ensure the  
37 effectiveness of the remedial action over time, when contaminants  
38 remain at a contaminated site in levels or concentrations above the  
39 applicable remediation standard that would allow unrestricted use  
40 of that property. Institutional controls may include, without  
41 limitation, structure, land, and natural resource use restrictions, well  
42 restriction areas, and deed notices;

43 "Licensed site remediation professional" means an individual  
44 who is licensed by the Site Remediation Professional Licensing  
45 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the  
46 department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12);

47 "Limited restricted use remedial action" means any remedial  
48 action that requires the continued use of institutional controls but  
49 does not require the use of an engineering control;

1 "No further action letter" means a written determination by the  
2 department that based upon an evaluation of the historical use of a  
3 particular site, or of an area of concern or areas of concern at that  
4 site, as applicable, and any other investigation or action the  
5 department deems necessary, there are no discharged contaminants  
6 present at the site, at the area of concern or areas of concern, at any  
7 other site to which a discharge originating at the site has migrated,  
8 or that any discharged contaminants present at the site or that have  
9 migrated from the site have been remediated in accordance with  
10 applicable remediation regulations;

11 "Person" means an individual, corporation, company,  
12 partnership, firm, or other private business entity;

13 "Person responsible for conducting the remediation" means (1)  
14 any person who executes or is otherwise subject to an oversight  
15 document to remediate a contaminated site, (2) the owner or  
16 operator of an industrial establishment subject to P.L.1983, c.330  
17 (C.13:1K-6 et al.), for the remediation of a discharge, (3) the owner  
18 or operator of an underground storage tank subject to P.L.1986,  
19 c.102 (C.58:10A-21 et seq.), for the remediation of a discharge, (4)  
20 any other person who discharges a hazardous substance or is in any  
21 way responsible for a hazardous substance, pursuant to section 8 of  
22 P.L.1976, c.141 (C.58:10-23.11g), that was discharged at a  
23 contaminated site, or (5) any other person who is remediating a site;

24 "Preliminary assessment" means the first phase in the process of  
25 identifying areas of concern and determining whether contaminants  
26 are or were present at a site or have migrated or are migrating from  
27 a site, and shall include the initial search for and evaluation of,  
28 existing site specific operational and environmental information,  
29 both current and historic, to determine if further investigation  
30 concerning the documented, alleged, suspected or latent discharge  
31 of any contaminant is required. The evaluation of historic  
32 information shall be conducted from 1932 to the present, except that  
33 the department may require the search for and evaluation of  
34 additional information relating to ownership and use of the site  
35 prior to 1932 if such information is available through diligent  
36 inquiry of the public records;

37 "Presumptive remedy" means a remedial action established by  
38 the department pursuant to paragraph (10) of subsection g. of  
39 section 35 of P.L.1993, c.139 (C.58:10B-12);

40 "Recreation and conservation purposes" means the use of lands  
41 for beaches, biological or ecological study, boating, camping,  
42 fishing, forests, greenways, hunting, natural areas, parks,  
43 playgrounds, protecting historic properties, water reserves,  
44 watershed protection, wildlife preserves, active sports, or a similar  
45 use for either public outdoor recreation or conservation of natural  
46 resources, or both;

47 "Remedial action" means those actions taken at a site or offsite if  
48 a contaminant has migrated or is migrating therefrom, as may be  
49 required by the department, including the removal, treatment,

1 containment, transportation, securing, or other engineering or  
2 treatment measures, whether to an unrestricted use or otherwise,  
3 designed to ensure that any discharged contaminant at the site or  
4 that has migrated or is migrating from the site, is remediated in  
5 compliance with the applicable health risk or environmental  
6 standards;

7 "Remedial action workplan" means a plan for the remedial action  
8 to be undertaken at a site, or at any area to which a discharge  
9 originating at a site is migrating or has migrated; a description of  
10 the remedial action to be used to remediate a site; a time schedule  
11 and cost estimate of the implementation of the remedial action; and  
12 any other information the department deems necessary;

13 "Remedial investigation" means a process to determine the  
14 nature and extent of a discharge of a contaminant at a site or a  
15 discharge of a contaminant that has migrated or is migrating from  
16 the site and the problems presented by a discharge, and may include  
17 data collected, site characterization, sampling, monitoring, and the  
18 gathering of any other sufficient and relevant information necessary  
19 to determine the necessity for remedial action and to support the  
20 evaluation of remedial actions if necessary;

21 "Remediation" or "remediate" means all **【necessary】** actions to  
22 investigate **【and】** , clean up , or respond to any known, suspected,  
23 or threatened discharge of contaminants, including **【, as necessary,】**  
24 the preliminary assessment, site investigation, remedial  
25 investigation, and remedial action, or any portion thereof, provided,  
26 however, that "remediation" or "remediate" shall not include the  
27 payment of compensation for damage to, or loss of, natural  
28 resources;

29 "Remediation fund" means the Hazardous Discharge Site  
30 Remediation Fund established pursuant to section 26 of P.L.1993,  
31 c.139 (C.58:10B-4);

32 "Remediation funding source" means the methods of financing  
33 the remediation of a discharge required to be established by a  
34 person performing the remediation pursuant to section 25 of  
35 P.L.1993, c.139 (C.58:10B-3);

36 "Remediation standards" means the combination of numeric  
37 standards that establish a level or concentration, and narrative  
38 standards to which contaminants must be treated, removed, or  
39 otherwise cleaned for soil, groundwater, or surface water, as  
40 provided by the department pursuant to section 35 of P.L.1993,  
41 c.139 (C.58:10B-12) in order to meet the health risk or  
42 environmental standards;

43 "Response action outcome" means a written determination by a  
44 licensed site remediation professional that the contaminated site  
45 was remediated in accordance with all applicable statutes and  
46 regulations, and based upon an evaluation of the historical use of  
47 the site, or of any area of concern at that site, as applicable, and any  
48 other investigation or action the department deems necessary, there



1 are no contaminants present at the site, or at any area of concern, at  
2 any other site to which a discharge originating at the site has  
3 migrated, or that any contaminants present at the site or that have  
4 migrated from the site have been remediated in accordance with  
5 applicable remediation regulations, and all applicable permits and  
6 authorizations have been obtained;

7 "Restricted use remedial action" means any remedial action that  
8 requires the continued use of engineering and institutional controls  
9 in order to meet the established health risk or environmental  
10 standards;

11 "Site investigation" means the collection and evaluation of data  
12 adequate to determine whether or not discharged contaminants exist  
13 at a site or have migrated or are migrating from the site at levels in  
14 excess of the applicable remediation standards. A site investigation  
15 shall be developed based upon the information collected pursuant to  
16 the preliminary assessment;

17 "Unrestricted use remedial action" means any remedial action  
18 that does not require the continued use of engineering or  
19 institutional controls in order to meet the established health risk or  
20 environmental standards;

21 "Voluntarily perform a remediation" means performing a  
22 remediation without having been ordered or directed to do so by the  
23 department or by a court and without being compelled to perform a  
24 remediation pursuant to the provisions of P.L.1983, c.330  
25 (C.13:1K-6 et al.).

26 (cf: P.L.2009, c.60, s.40)

27  
28 7. Section 30 of P.L.2009, c.60 (C.58:10B-1.3) is amended to  
29 read as follows:

30 30. a. An owner or operator of an industrial establishment  
31 subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the  
32 discharger of a hazardous substance or a person in any way  
33 responsible for a hazardous substance pursuant to the provisions of  
34 subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or  
35 the owner or operator of an underground storage tank regulated  
36 pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.),  
37 that has discharged a hazardous substance, shall remediate the  
38 discharge of a hazardous substance.

39 b. A person who initiates a remediation **【of a contaminated**  
40 **site】** at least 180 days after the date of enactment of P.L.2009, c.60  
41 (C.58:10C-1 et al.) shall:

42 (1) **【hire】** retain a licensed site remediation professional to  
43 perform the remediation;

44 (2) notify the department of the name and license information of  
45 the licensed site remediation professional who has been **【hired】**  
46 retained to perform the remediation;

47 (3) conduct the remediation without the prior approval of the  
48 department, unless directed otherwise by the department;

1 (4) establish a remediation funding source if a remediation  
2 funding source is required pursuant to the provisions of section 25  
3 of P.L.1993, c.139 (C.58:10B-3);

4 (5) pay all applicable fees and oversight costs as required by the  
5 department;

6 (6) provide access to the contaminated site to the department;

7 (7) provide access to all applicable documents concerning the  
8 remediation to the department;

9 (8) meet the mandatory remediation timeframes and expedited  
10 site specific timeframes established by the department pursuant to  
11 section 28 of P.L.2009, c.60 (C.58:10C-28); and

12 (9) obtain all necessary permits.

13 c. (1) Any person who initiates a remediation prior to the date  
14 of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or prior to the  
15 issuance of temporary licenses to site remediation professionals  
16 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12), shall  
17 comply with the provisions of paragraphs (4) through (9) of  
18 subsection b. of this section.

19 (2) The department may require a person required to perform a  
20 remediation pursuant to subsection a. of this section, or a person  
21 who has initiated a remediation prior to the date of enactment of  
22 P.L.2009, c.60 (C.58:10C-1 et al.), to comply with the provisions of  
23 subsection b. of this section if, after the date of enactment of  
24 P.L.2009, c.60 (C.58:10C-1 et al.), the department (a) issues a final  
25 order or a penalty becomes due and payable, concerning the  
26 performance of the remediation, or (b) issues a demand for  
27 stipulated penalties pursuant to the provisions of an oversight  
28 document in which the person waived a right to a hearing on the  
29 penalties.

30 (3) No later than three years after the date of enactment of  
31 P.L.2009, c.60 (C.58:10C-1 et al.), a person responsible for  
32 conducting the remediation, no matter when the remediation is  
33 initiated, shall comply with the provisions of subsection b. of this  
34 section.

35 d. (1) The provisions of this section shall not apply to any  
36 person who remediates a discharge from an unregulated heating oil  
37 tank. For any person who remediates a discharge from an  
38 unregulated heating oil tank, the provisions of section 15 of  
39 P.L.2009, c.60 (C.58:10C-15) shall apply.

40 (2) The provisions of this section shall not apply to any person  
41 who: (a) does not own a contaminated site, (b) conducts a  
42 preliminary assessment or site investigation of the contaminated site  
43 for the purpose of conducting all appropriate inquiry into the  
44 previous ownership and uses of the property as provided in section  
45 8 of P.L.1976, c.141 (C.58:10-23.11g), and (c) has not discharged a  
46 hazardous substance at the site or is not in any way responsible for  
47 a hazardous substance discharged at the site pursuant to section 8 of  
48 P.L.1976, c.141 (C.58:10-23.11g).

1       <sup>2</sup>(3) A person shall not be required to retain a licensed site  
2 remediation professional pursuant to this section to conduct  
3 sampling or investigation to confirm or evaluate a remediation  
4 performed or supervised by a retained licensed site remediation  
5 professional, provided that such sampling or investigation: (1) is  
6 not required pursuant to this section or any other law, rule,  
7 regulation, or order; (2) is not conducted in order to obtain a  
8 response action outcome; and (3) is not conducted in order to  
9 investigate, clean up, or respond to any known, suspected, or  
10 threatened discharge of a contaminant.<sup>2</sup>

11       e. Any person who fails to comply with the provisions of this  
12 section shall be liable to the enforcement provisions established  
13 pursuant to section 22 of P.L.1976, c.141 (C.58:10-23.11u).  
14 (cf: P.L.2009, c.60, s.30)

15  
16       8. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to  
17 read as follows:

18       25. a. Except as otherwise provided in section 27 of P.L.2009,  
19 c.60 (C.58:10C-27), the owner or operator of an industrial  
20 establishment or any other person required to perform remediation  
21 activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a  
22 discharger, a person in any way responsible for a hazardous  
23 substance, or a person otherwise liable for cleanup and removal  
24 costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has  
25 been issued a directive or an order by a State agency, who has  
26 entered into an administrative consent order with a State agency, or  
27 who has been ordered by a court to clean up and remove a  
28 hazardous substance or hazardous waste discharge pursuant to  
29 P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and  
30 maintain a remediation funding source in the amount necessary to  
31 pay the estimated cost of the required remediation. A person who  
32 **【voluntarily undertakes a remediation pursuant to a memorandum**  
33 **of agreement with the department, or without the department's**  
34 **oversight, or who】** performs a remediation in an environmental  
35 opportunity zone is not required to establish or maintain a  
36 remediation funding source. A person who uses an innovative  
37 technology or who, in a timely fashion, implements an unrestricted  
38 use remedial action or a limited restricted use remedial action for all  
39 or part of a remedial action is not required to establish a  
40 remediation funding source for the cost of the remediation  
41 involving the innovative technology or permanent remedy. A  
42 government entity, a person who undertakes a remediation at their  
43 primary or secondary residence, the owner or operator of a child  
44 care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.)  
45 who performs a remediation at the licensed child care center, or the  
46 person responsible for conducting a remediation at a public school  
47 or private school as defined in N.J.S.18A:1-1, or a charter school  
48 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.), shall

1 not be required to establish or maintain a remediation funding  
2 source. A person required to establish a remediation funding source  
3 pursuant to this section shall provide to the department satisfactory  
4 documentation that the requirement has been met.

5 The remediation funding source shall be established in an  
6 amount equal to or greater than the cost estimate of the  
7 implementation of the remediation (1) as approved by the  
8 department or as determined by the licensed site remediation  
9 professional, as applicable, in accordance with rules and regulations  
10 adopted by the department pursuant to section 29 of P.L.2009, c.60  
11 (C.58:10C-29), (2) as provided in an administrative consent order or  
12 remediation agreement or remediation certification as required  
13 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as  
14 stated in a departmental order or directive, or (4) as agreed to by a  
15 court, and shall be in effect for a term not less than the actual time  
16 necessary to perform the remediation at the site. Whenever the  
17 remediation cost estimate increases, the person required to establish  
18 the remediation funding source shall cause the amount of the  
19 remediation funding source to be increased to an amount at least  
20 equal to the new estimate. Whenever the remediation cost estimate  
21 decreases, the person required to obtain the remediation funding  
22 source may file a written request to the department to decrease the  
23 amount in the remediation funding source or may submit written  
24 documentation to the department certified by the licensed site  
25 remediation professional of the details of the decrease in the cost  
26 estimate, as applicable. The remediation funding source may be  
27 decreased to the amount of the new estimate upon written approval  
28 by the department delivered to the person who established the  
29 remediation funding source or upon submission of the certification  
30 by the licensed site remediation professional, as applicable.

31 b. **【**The person who established the remediation funding source  
32 may use the remediation funding source to pay for the actual cost of  
33 the remediation.**】** The department may not require any other  
34 financial assurance by the person responsible for conducting the  
35 remediation other than that required in this section. In the case of a  
36 remediation performed pursuant to P.L.1983, c.330, the remediation  
37 funding source shall be established no more than 14 days after the  
38 approval by the department or the certification by the licensed site  
39 remediation professional of a remedial action workplan, upon  
40 approval of a remediation agreement pursuant to subsection e. of  
41 section 4 of P.L.1983, c.330 (C.13:1K-9), or upon submission of a  
42 remediation certification pursuant to subsection e. of P.L.1983,  
43 c.330, unless the department approves an extension. In the case of  
44 a remediation performed pursuant to P.L.1976, c.141, the  
45 remediation funding source shall be established as provided in an  
46 administrative consent order signed by the parties, as provided by a  
47 court, or as directed or ordered by the department. In the case of a  
48 remediation performed under the department's oversight pursuant to  
49 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation

1 funding source shall be established at the time the person becomes  
2 subject to the department's oversight. The establishment of a  
3 remediation funding source for that part of the remediation funding  
4 source to be established by a grant or financial assistance from the  
5 remediation fund may be established for the purposes of this  
6 subsection by the application for a grant or financial assistance from  
7 the remediation fund and satisfactory evidence submitted to the  
8 department that the grant or financial assistance will be awarded.  
9 However, if the financial assistance or grant is denied or the  
10 department finds that the person responsible for establishing the  
11 remediation funding source did not take reasonable action to obtain  
12 the grant or financial assistance, the department shall require that  
13 the full amount of the remediation funding source be established  
14 within 14 days of the denial or finding. Except as provided in  
15 section 27 of P.L.2009, c.60 (C.58:10C-27), the remediation  
16 funding source shall be evidenced by the establishment and  
17 maintenance of (1) a remediation trust fund, administered by an  
18 entity that has the authority to act as a trustee and whose trust  
19 operations are regulated and examined by a federal or State agency,  
20 or governed by court rule, (2) an environmental insurance policy,  
21 issued by an entity licensed by the Department of Banking and  
22 Insurance to transact business in the State of New Jersey, to fund  
23 the remediation, (3) a line of credit from a financial institution  
24 regulated pursuant to State or federal law and satisfactory to the  
25 department authorizing the person responsible for performing the  
26 remediation to borrow money, (4) a self-guarantee, **【or】** (5) a letter  
27 of credit from a financial institution regulated pursuant to State or  
28 federal law that guarantees the performance of the remediation by  
29 the person to the satisfaction of the department, or (6) a surety bond  
30 from an entity that is listed as an acceptable surety on federal  
31 bonds in United States Treasury Department Circular 570, or by any  
32 combination thereof. Where it can be demonstrated that a person  
33 cannot establish and maintain a remediation funding source for the  
34 full cost of the remediation by a method specified in this subsection,  
35 that person may establish the remediation funding source for all or a  
36 portion of the remediation, by securing financial assistance from the  
37 Hazardous Discharge Site Remediation Fund as provided in section  
38 29 of P.L.1993, c.139 (C.58:10B-7).

39 c. A remediation trust fund shall be established pursuant to the  
40 provisions of this subsection. An originally signed duplicate of the  
41 trust agreement shall be delivered to the department (1) by certified  
42 mail , overnight delivery, or personal service within 14 days of  
43 receipt of notice from the department that the remedial action  
44 workplan or remediation agreement as provided in subsection e. of  
45 section 4 of P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14  
46 days of submission to the department of a remedial action workplan  
47 certified by a licensed site remediation professional as provided in  
48 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
49 submission of a remediation certification to the department as

1 provided in subsection e. of section 4 of P.L.1983, c.330, or (4) as  
2 specified in an administrative consent order, civil order, or order of  
3 the department, as applicable. The remediation trust fund agreement  
4 shall conform to a model trust fund agreement as established by the  
5 department and shall be accompanied by a certification of  
6 acknowledgment that conforms to a model established by the  
7 department. The trustee shall be an entity which has the authority  
8 to act as a trustee and whose trust operations are regulated and  
9 examined by a federal or New Jersey agency.

10 The trust fund agreement shall provide that the remediation trust  
11 fund may not be revoked or terminated by the person required to  
12 establish the remediation funding source or by the trustee without  
13 the written consent of the department. The person who establishes  
14 the remediation funding source in the form of a trust fund may use  
15 the remediation funding source to pay for the actual cost of the  
16 remediation. The trustee shall **[release]** disburse to the person  
17 required to establish the remediation funding source, or to the  
18 department or transferee of the property, as appropriate, only those  
19 moneys as the department or the licensed site remediation  
20 professional authorizes, in writing, to be **[released]** disbursed. The  
21 trustee shall release to the person who established the remediation  
22 funding source, or to the department or transferee of the property,  
23 as appropriate, only those moneys as the department authorizes, in  
24 writing, to be released. For any remediation subject to the oversight  
25 of the department pursuant to section 27 of P.L.2009, c.60  
26 (C.58:10C-27), the person entitled to receive money from the  
27 remediation trust fund shall submit documentation to the  
28 department detailing the costs incurred or to be incurred as part of  
29 the remediation. Upon a determination by the department that the  
30 costs are consistent with the remediation of the site, the department  
31 shall, in writing, authorize a disbursement of moneys from the  
32 remediation trust fund in the amount of the documented costs.

33 The department shall return the original remediation trust fund  
34 agreement to the trustee for termination after the **[person required**  
35 **to establish the remediation funding source substitutes]** department  
36 receives an alternative remediation funding source as specified in  
37 this section or the department notifies the person required to  
38 establish and maintain the remediation funding source that that  
39 person is no longer required to maintain a remediation funding  
40 source for remediation of the contaminated site.

41 d. An environmental insurance policy shall be established  
42 pursuant to the provisions of this subsection. An originally signed  
43 duplicate of the insurance policy shall be delivered to the  
44 department (1) by certified mail, overnight delivery, or personal  
45 service within **[30]** 14 days of receipt of notice from the  
46 department that the remedial action workplan or remediation  
47 agreement, as provided in subsection e. of section 4 of P.L.1983,  
48 c.330, is approved, (2) within 14 days of submission to the

1 department of a remedial action workplan certified by a licensed  
2 site remediation professional as provided in subsection e. of section  
3 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon submission of a  
4 remediation certification to the department as provided in  
5 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), or (4) as  
6 specified in an administrative consent order, civil order, or order of  
7 the department, as applicable. [The insurance company shall  
8 release to the person required to establish the remediation funding  
9 source, or to the department or transferee of the property, as  
10 appropriate, only those moneys as the department or the licensed  
11 site remediation professional authorizes, in writing, to be released.  
12 The person entitled to receive money from the environmental  
13 insurance policy shall submit documentation to the department  
14 detailing the costs incurred or to be incurred as part of the  
15 remediation.] The environmental insurance policy shall be issued  
16 by an entity that is licensed by the New Jersey Department of  
17 Banking and Insurance to transact business in the State.

18 An environmental insurance policy cannot be revoked or  
19 terminated without the prior written approval of the department,  
20 except upon failure by the insured to pay the premium. The issuer  
21 of the environmental insurance policy may revoke or terminate the  
22 policy for failure to pay the premium only after notifying the person  
23 who established the remediation funding source and the department,  
24 by certified mail, of the decision to revoke or terminate the policy.

25 The insurance company that provides the environmental  
26 insurance policy shall reduce the policy only as the department  
27 directs in writing. The insurance company that provides the  
28 environmental insurance policy shall release to the department or to  
29 a person authorized to perform the remediation pursuant to  
30 subsection g. of this section only moneys authorized by the  
31 department, in writing, to be released. The department shall  
32 authorize, in writing, the termination of the environmental  
33 insurance policy after the department receives an alternative  
34 remediation funding source as specified in this section or the  
35 department notifies the person required to establish and maintain  
36 the funding source that the person is no longer required to maintain  
37 a remediation funding source for the remediation of the  
38 contaminated site.

39 e. A line of credit shall be established pursuant to the  
40 provisions of this subsection. A line of credit shall allow the person  
41 establishing it to borrow money up to a limit established in a written  
42 agreement in order to pay for the cost of the remediation for which  
43 the line of credit was established. An originally signed duplicate of  
44 the line of credit agreement shall be delivered to the department (1)  
45 by certified mail, overnight delivery, or personal service within 14  
46 days of receipt of notice from the department that the remedial  
47 action workplan or remediation agreement as provided in subsection  
48 e. of section 4 of P.L.1983, c.330 is approved, (2) within 14 days of  
49 submission to the department of a remedial action workplan

1 certified by a licensed site remediation professional as provided in  
2 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
3 submission of a remediation certification [pursuant to] to the  
4 department as provided in subsection e. of section 4 of P.L.1983,  
5 c.330 (C.13:1K-9), or (4) as specified in an administrative consent  
6 order, civil order, or order of the department, as applicable. The  
7 line of credit agreement shall conform to a model agreement as  
8 established by the department and shall be accompanied by a  
9 certification of acknowledgment that conforms to a model  
10 established by the department. The line of credit shall be issued by  
11 an institution that is licensed by the New Jersey Department of  
12 Banking and Insurance to transact business in the State, or by a  
13 federally regulated bank.

14 The line of credit shall not be allowed to expire, unless the  
15 institution provides the appropriate notification to the department  
16 and the borrower, as defined in a model agreement established by  
17 the department. The person who establishes the remediation  
18 funding source in the form of a line of credit may use the  
19 remediation funding source to pay for the actual cost of the  
20 remediation. The institution providing the line of credit shall  
21 disburse to the person required to establish the remediation funding  
22 source, or to the department or transferee of the property, as  
23 appropriate, only those moneys as the department or the licensed  
24 site remediation professional authorizes, in writing, to be disbursed.

25 The [person or] institution providing the line of credit shall release  
26 to the person [required to establish] who established the  
27 remediation funding source, or to the department or transferee of  
28 the property as appropriate, only those moneys as the department  
29 [or the licensed site remediation professional] authorizes, in  
30 writing, to be released. [The person entitled to draw upon the line  
31 of credit shall submit documentation to the department detailing the  
32 costs incurred or to be incurred as part of the remediation. Upon a  
33 determination that the costs are consistent with the remediation of  
34 the site, the department shall, in writing, authorize a disbursement  
35 from the line of credit in the amount of the documented costs.]

36 The department shall return the original line of credit agreement  
37 to the [person or] institution providing the line of credit for  
38 termination after the [person required to establish the remediation  
39 funding source substitutes] department receives an alternative  
40 remediation funding source as specified in this section, or after the  
41 department notifies the person required to establish and maintain  
42 the remediation funding source that that person is no longer  
43 required to maintain a remediation funding source for remediation  
44 of the contaminated site.

45 f. A person may self-guarantee a remediation funding source  
46 upon the submittal of documentation to the department  
47 demonstrating that the cost of the remediation [as estimated in the  
48 remedial action workplan, in the remediation agreement as provided



1 in subsection e. of section 4 of P.L.1983, c.330, in a remediation  
2 certification submitted pursuant to subsection e. of P.L.1983, c.330,  
3 in an administrative consent order, or as provided in a departmental  
4 or court order,] would not exceed one-third of the tangible net  
5 worth of the person required to establish the remediation funding  
6 source, and that the person has a cash flow sufficient to assure the  
7 availability of sufficient moneys for the remediation during the time  
8 necessary for the remediation. Documentation shall be delivered to  
9 the department (1) by certified mail, overnight delivery, or personal  
10 service within 14 days of receipt of notice from the department that  
11 the remedial action workplan or remediation agreement as provided  
12 in subsection e. of section 4 of P.L.1983, c.330 is approved, (2)  
13 within 14 days of submission to the department of a remedial action  
14 workplan certified by a licensed site remediation professional as  
15 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
16 9), (3) upon submission of a remediation certification pursuant to  
17 the department as provided in subsection e. of section 4 of  
18 P.L.1983, c.330 (C.13:1K-9), or (4) as specified in an  
19 administrative consent order, civil order, or order of the department,  
20 as applicable. Satisfactory documentation of a person's capacity to  
21 self-guarantee a remediation funding source shall consist of audited  
22 financial statements, in which the auditor expresses an unqualified  
23 opinion, that includes a statement of income and expenses or similar  
24 statement of that person and the balance sheet or similar statement  
25 of assets and liabilities as used by that person for the fiscal year of  
26 the person making the application that ended closest in time to the  
27 date of the self-guarantee application. In the case of a special  
28 purpose entity established specifically for the purpose of acquiring  
29 and redeveloping a contaminated site, and for which a statement of  
30 income and expenses is not available, the documentation shall  
31 include a statement of assets and liabilities certified by a certified  
32 public accountant. The self-guarantee application shall be certified  
33 as true to the best of the applicant's information, knowledge, and  
34 belief, by the chief financial, or similar officer or employee, or  
35 general partner, or principal of the person making the self-guarantee  
36 application. A person shall be deemed by the department to possess  
37 the required cash flow pursuant to this section if that person's gross  
38 receipts exceed its gross payments in that fiscal year in an amount  
39 at least equal to the estimated costs of completing the remedial  
40 action workplan schedule to be performed in the 12-month period  
41 following the date on which the application for self-guarantee is  
42 made and the individual or entity possesses a net cash flow  
43 provided by operating activities in an amount at least equal to the  
44 estimated costs of completing the remediation in the 12-month  
45 period following the date the application is made. In the event that a  
46 self-guarantee is required for a period of more than one year,  
47 applications for a self-guarantee shall be renewed annually pursuant  
48 to this subsection for each successive year. The department may  
49 establish requirements and reporting obligations to ensure that the

1 person proposing to self-guarantee a remediation funding source  
2 meets the criteria for self-guaranteeing prior to the initiation of  
3 remedial action and until completion of the remediation.

4 g. (1) If the person required to establish the remediation  
5 funding source fails to perform the remediation as required, or fails  
6 to meet the conditions established pursuant to paragraph (3) of  
7 subsection a. of section 27 of P.L.2009, c.60 (C.58:10C-27) or  
8 section 1 of P.L.2013, c.283 (C.58:10C-27.1), or the mandatory  
9 remediation timeframes or expedited site specific timeframes  
10 established pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28)  
11 for the performance of the remedial action, the department shall  
12 make a written determination of this fact. A copy of the  
13 determination by the department shall be delivered to the person  
14 required to establish the remediation funding source and, in the case  
15 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-  
16 6 et al.), to any transferee of the property. Following this written  
17 determination, the department may perform the remediation in place  
18 of the person required to establish the remediation funding source.  
19 In order to finance the cost of the remediation the department may  
20 make disbursements from the remediation funding source, or, if  
21 sufficient moneys are not available from those funds, from the  
22 remediation guarantee fund created pursuant to section 45 of  
23 P.L.1993, c.139 (C.58:10B-20).

24 (2) The transferee of property subject to a remediation  
25 conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at  
26 any time after the department's determination of nonperformance by  
27 the owner or operator required to establish the remediation funding  
28 source, petition the department, in writing, with a copy being sent to  
29 the owner and operator, for authority to perform the remediation at  
30 the industrial establishment. The department, upon a determination  
31 that the transferee is competent to do so, may grant that petition  
32 which shall authorize the transferee to perform the remediation as  
33 specified in an approved remedial action workplan, or to perform  
34 the activities as required in a remediation agreement, or as provided  
35 in a remediation certification, and to avail itself of the moneys in  
36 the remediation trust fund, letter of credit, **[or]** line of credit , or  
37 surety bond, or to make claims upon the environmental insurance  
38 policy for these purposes. The petition of the transferee shall not be  
39 granted by the department if the owner or operator continues or  
40 begins to perform its obligations within 14 days of the petition  
41 being filed with the department.

42 (3) After the department has begun to perform the remediation  
43 in the place of the person required to establish the remediation  
44 funding source or has granted the petition of the transferee to  
45 perform the remediation, the person required to establish the  
46 remediation funding source shall not be permitted by the  
47 department to continue its performance obligations except upon the  
48 agreement of the department or the transferee, as applicable, or

1 except upon a determination by the department that the transferee is  
2 not adequately performing the remediation.

3 h. A letter of credit shall be established pursuant to the  
4 provisions of this subsection. A letter of credit shall allow a person  
5 to guarantee the availability of funds up to a limit established in a  
6 written agreement in order to guarantee the payment of the cost of  
7 the remediation for which the letter of credit was established. An  
8 originally signed duplicate of the letter of credit agreement shall be  
9 delivered to the department (1) by certified mail, overnight  
10 delivery, or personal service within 14 days of receipt of notice  
11 from the department that the remedial action workplan or  
12 remediation agreement as provided in subsection e. of section 4 of  
13 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of  
14 submission to the department of a remedial action workplan  
15 certified by a licensed site remediation professional as provided in  
16 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
17 submission of a remediation certification [pursuant to] to the  
18 department as provided in subsection e. of section 4 of P.L.1983,  
19 c.330 (C.13:1K-9), or (4) as specified in an administrative consent  
20 order, civil order, or order of the department, as applicable. The  
21 letter of credit agreement shall conform to a model agreement as  
22 established by the department and shall be accompanied by a  
23 certification of acknowledgment that conforms to a model  
24 established by the department. The letter of credit shall be issued  
25 by an entity that is licensed by the New Jersey Department of  
26 Banking and Insurance to transact business in the State, or by a  
27 federally regulated bank.

28 The letter of credit shall not be allowed to expire unless the  
29 financial institution provides the appropriate notification to the  
30 department and the application, as defined by a model agreement  
31 established by the department. The financial institution that  
32 provides the letter of credit shall release to the department or to a  
33 person authorized to perform the remediation pursuant to subsection  
34 g. of this section, only moneys authorized by the department, [or  
35 the authorized licensed site remediation professional,] in writing, to  
36 be released. The department shall return the original letter of credit  
37 to the financial institution providing the letter of credit for  
38 termination after the [person required to establish the remediation  
39 funding source substitutes] department receives an alternative  
40 remediation funding source as authorized in this section, or after the  
41 department notifies the person required to establish and maintain  
42 the remediation funding source that that person is no longer  
43 required to maintain a remediation funding source for the  
44 remediation of the contaminated site.

45 i. A surety bond shall be established pursuant to the provisions  
46 of this subsection. A surety bond shall allow a person to guarantee  
47 the availability of funds up to a limit established in a written  
48 agreement in order to guarantee the payment of the cost of the

1 remediation for which the surety bond was established. An  
2 originally signed duplicate of the surety bond agreement shall be  
3 delivered to the department (1) by certified mail, overnight  
4 delivery, or personal service within 14 days of receipt of notice  
5 from the department that the remedial action workplan or  
6 remediation agreement as provided in subsection e. of section 4 of  
7 P.L.1983, c.330 (C.13:1K-9) is approved, (2) within 14 days of  
8 submission to the department of a licensed site remediation  
9 professional certified remedial action workplan as provided in  
10 subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), (3) upon  
11 submission of a remediation certification to the department as  
12 provided in subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-  
13 9), or (4) as specified in an administrative consent order, civil order,  
14 or order of the department, as applicable. The surety bond  
15 agreement shall conform to a model agreement established by the  
16 department and shall be accompanied by a certification of  
17 acknowledgment that conforms to a model established by the  
18 department. The surety company issuing the bond must be a  
19 company that is listed as an acceptable surety on federal bonds in  
20 United States Treasury Department Circular 570.

21 The surety bond shall not be cancelled unless the surety company  
22 provides the appropriate notice of cancellation to the department  
23 and the principal, as defined in a model agreement established by  
24 the department. The surety company that provides the surety bond  
25 shall release to the department, or to a person authorized to perform  
26 the remediation pursuant to subsection g. of this section, only  
27 monies authorized by the department, in writing, to be released.  
28 The department shall return the original surety bond to the surety  
29 company for termination after the department receives an  
30 alternative remediation funding source as specified in this section or  
31 the department notifies the person that that person is no longer  
32 required to maintain a remediation funding source for remediation  
33 of the contaminated site.

34 (cf: P.L.2009, c.60, s.43)

35  
36 9. (New section) The department shall encourage the use of  
37 green and sustainable practices during the remediation of a  
38 contaminated site. The use of green and sustainable practices shall  
39 not alter the requirement that the remediation be protective of the  
40 public health and safety and of the environment.

41  
42 10. Section 39 of P.L.1993, c.139 (C.58:10B-15) is amended to  
43 read as follows:

44 39. a. Any person who, before the effective date of P.L.1993,  
45 c.139 (C.13:1K-9.6 et al.), has discharged a hazardous substance in  
46 violation of P.L.1976, c.141, and:

47 (1) has not been issued a directive to remove or arrange for the  
48 removal of the discharge pursuant to section 7 of P.L.1976, c.141  
49 (C.58:10-23.11f);

1 (2) has not been assessed a civil penalty, a civil administrative  
2 penalty, or is not the subject of an action pursuant to the provisions  
3 of section 22 of P.L.1976, c.141 (C.58:10-23.11u);

4 (3) has not entered into an administrative consent order to clean  
5 up and remove the discharge; and

6 (4) has not been ordered by a court to clean up and remove the  
7 discharge, shall not be subject to a monetary penalty for the failure  
8 to report the discharge or for any civil violation of P.L.1976, c.141  
9 (C.58:10-23.11 et seq.) or P.L.1977, c.74 (C.58:10A-1 et seq.) that  
10 resulted in the discharge if the person notifies the department of the  
11 discharge and enters into an administrative consent order [or a  
12 memorandum of agreement] with the department to remediate the  
13 discharge in accordance with the provisions of P.L.1976, c.141  
14 (C.58:10-23.11 et seq.), or any rules or regulations adopted  
15 pursuant thereto, within one year of the effective date of P.L.1993,  
16 c.139 (C.13:1K-9.6 et al.). Any person who notifies the department  
17 of the discharge pursuant to this section shall be liable for all  
18 cleanup and removal costs as provided in section 8 of P.L.1976,  
19 c.141 (C.58:10-23.11g).

20 b. Notwithstanding the provisions of subsection a. of this  
21 subsection, any person who enters into [a memorandum of  
22 agreement or] an administrative consent order pursuant to this  
23 section and fails to remediate the discharge in accordance with the  
24 [memorandum of agreement or] administrative consent order, shall  
25 be subject to all penalties for violations that occurred before the  
26 effective date of P.L.1993, c.139 (C.13:1K-9.6 et al.) as well as any  
27 penalties for subsequent violations.

28 c. The provisions of this section shall not apply to violations of  
29 a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.).

30 d. Any documents or information provided to the department  
31 pursuant to this section may not be used in a criminal investigation  
32 or criminal prosecution against the person providing the  
33 information or documents for those violations that occurred before  
34 the effective date of [this act] P.L.1993, c.139 as long as the person  
35 remediates the discharge in conformance with the administrative  
36 consent order [or memorandum of agreement] entered into  
37 pursuant to subsection a. of this section.

38 (cf: P.L.1993, c.139, s.39)

39  
40 11. Section 1 of P.L.2006, c.65 (C.58:10B-24.1) is amended to  
41 read as follows:

42 1. a. Prior to the initiation of the remedial [action]  
43 investigation phase of the remediation of a contaminated site, any  
44 person who is responsible for conducting a remediation of the  
45 contaminated site, including the Department of Environmental  
46 Protection when it conducts a remediation of a contaminated site  
47 using public monies, shall provide written notification describing  
48 the activities that are to take place at the contaminated site to the

1 clerk of the municipality and to the county health department and  
2 the local health agency wherein the site is located. The written  
3 notice shall include notice of the location of the contaminated site,  
4 including address and the lot and block number of the contaminated  
5 site. The written notice shall also inform the municipality, county  
6 health department, and local health agency that they may receive a  
7 copy of the remedial action workplan **and any updates or status**  
8 **reports** , any other workplan, report, or validated data required by  
9 the department, and any updates thereto, and a copy of the site  
10 health and safety plan, from the responsible party, upon request.  
11 For any remediation of a contaminated site that will take longer  
12 than two years to complete, the person responsible for conducting  
13 the remediation shall provide the notification **shall be provided**  
14 required by this section every two years until remediation is  
15 complete.

16 b. Notice required pursuant to this section shall not be required  
17 when the remediation of a contaminated site is caused by a leaking  
18 residential underground storage tank used to store heating oil for  
19 on-site consumption in a one to four family residential building or  
20 an emergency response action.

21 (cf: P.L.2007, c.276, s.1)

22

23 12. Section 2 of P.L.2006, c.65 (C.58:10B-24.2) is amended to  
24 read as follows:

25 2. Upon request of a municipality, any person who is responsible  
26 for conducting a remediation of a contaminated site shall submit a  
27 copy of a remedial action workplan , any other workplan, report, or  
28 validated data required by the department <sup>1</sup>pursuant to law, rule, or  
29 regulation<sup>1</sup>, and any updates or status reports pursuant to the  
30 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the  
31 "Brownfield and Contaminated Site Remediation Act," P.L.1997,  
32 c.278 (C.58:10B-1.1 et al.), or the "Spill Compensation and Control  
33 Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), and a copy of the site  
34 health and safety plan, to the clerk of the municipality wherein the  
35 contaminated site is located at the same time as **the workplan is**  
36 those documents are submitted to the **Department of Environmental**  
37 **Protection** department. Upon request of a county health department  
38 or a local health agency, the person who is responsible for conducting  
39 a remediation of a contaminated site shall also submit a copy of the  
40 remedial action workplan **and** , any other workplan, report, or  
41 validated data required by the department <sup>1</sup>pursuant to law, rule, or  
42 regulation<sup>1</sup>, any updates or status reports, and a copy of the site health  
43 and safety plan, to the county health department or local health  
44 agency, respectively <sup>1</sup>, wherein the contaminated site is located at the  
45 same time as those documents are submitted to the department<sup>1</sup>.

46 (cf: P.L.2007, c.276, s.2)

1       13. Section 3 of P.L.2006, c.65 (C.58:10B-24.3) is amended to  
2 read as follows:

3       3. a. Any person who is responsible for conducting a remediation  
4 of a contaminated site shall be responsible for notifying the public of  
5 the remediation of the contaminated site pursuant to rules and  
6 regulations adopted by the Department of Environmental Protection  
7 pursuant to subsection b. of this section.

8       b. Within six months after the date of enactment of this act, the  
9 Department of Environmental Protection shall adopt, pursuant to the  
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
11 rules and regulations setting forth the notice requirements pursuant to  
12 subsection a. of this section. The rules and regulations to be adopted  
13 by the department pursuant to this section shall require any person  
14 who is responsible for conducting a remediation of a contaminated site  
15 to provide written notification to any local property owners and tenants  
16 who reside within 200 feet of the contaminated site. The notification  
17 shall summarize site conditions and provide information about actions  
18 being taken to remediate the site <sup>1</sup>**["and"]** . The department<sup>1</sup> may  
19 require written notification **["or"]** <sup>1</sup>**["and"]** or<sup>1</sup> the posting of a sign  
20 visible to the public which shall be located on the boundaries of the  
21 contaminated site <sup>1</sup>, or both<sup>1</sup> .

22       c. A person responsible for conducting a remediation shall  
23 respond to any <sup>1</sup>written or email<sup>1</sup> inquiries from the public <sup>1</sup>regarding  
24 the status of the remediation<sup>1</sup> that the person receives, or that the  
25 department receives and forwards to the person responsible for  
26 conducting the remediation, by providing either: (1) <sup>1</sup>**["specific"]<sup>1</sup>**  
27 information or documents that are responsive to the public inquiry; or  
28 (2) a written <sup>1</sup>summary<sup>1</sup> status report for the remediation, which shall  
29 be made in a form and manner as prescribed by the department  
30 pursuant to rules and regulations. A person responsible for conducting  
31 a remediation may designate a licensed site remediation professional  
32 to respond to public inquiries pursuant to this subsection.

33 (cf: P.L.2006, c.65, s.3)

34

35       14. Section 1 of P.L.2005, c.360 (C.58:10B-27.2) is amended to  
36 read as follows:

37       1. a. The provisions of any other law, or rule or regulation  
38 adopted pursuant thereto, to the contrary notwithstanding, the State  
39 may enter into a redevelopment agreement pursuant to sections 35  
40 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a  
41 redevelopment project that was commenced prior to the effective  
42 date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26  
43 through 58:10B-31) in which the State may agree to reimburse a  
44 developer for 75 **[%]** percent of remediation costs incurred  
45 subsequent to entering into the redevelopment agreement, provided  
46 that the **["Chief Executive Officer and Secretary of the Commerce**  
47 **and Economic Growth Commission"]** Executive Director of the New

1 Jersey Economic Development Authority, in consultation with the  
2 State Treasurer, finds that:

3 (1) the remediation that has not yet been performed on the  
4 subject real property is necessary to ensure that the public health  
5 and safety and the environment are protected; and

6 (2) (a) the cost or extent of remediation was unanticipated at the  
7 time the redevelopment project was commenced; (b) changes to the  
8 rules and regulations governing site remediation were adopted after  
9 the redevelopment project was commenced; (c) principles of  
10 fairness and consistency indicate that the reimbursement of  
11 remediation costs provided by P.L.1997, c.278 should be made  
12 available to the developer who agreed to remediate and redevelop a  
13 brownfield prior to the enactment of P.L.1997, c.278; (d) an  
14 estimate of the cost of the remediation to be performed subsequent  
15 to entry into the redevelopment agreement as approved by the  
16 Department of Environmental Protection exceeds \$10 million; (e)  
17 the subject real property is situated within a Planning Area 1 as  
18 designated in the State Development and Redevelopment Plan; and  
19 (f) a phase of the redevelopment project has not been commenced.

20 b. A developer that enters into a redevelopment agreement  
21 pursuant to this section shall be eligible for reimbursement of  
22 remediation costs pursuant to sections 36 and 37 of P.L.1997, c.278  
23 (C.58:10B-28 and 58:10B-29), provided that:

24 (1) in estimating the amount of State taxes that are anticipated to  
25 be derived from a redevelopment project the director shall only  
26 consider tax revenues generated subsequent to the date of the  
27 redevelopment agreement from a phase of the redevelopment  
28 project that has not generated tax revenues prior to January 1, 2006;  
29 and

30 (2) a developer has entered into **【a memorandum of agreement**  
31 **or other】** an oversight document with the Commissioner of  
32 Environmental Protection for the remediation of a contaminated site  
33 located on the site of the redevelopment project and the developer is  
34 in compliance with the **【memorandum of agreement or】** oversight  
35 document.

36 c. Nothing in this section shall require that a no further action  
37 letter be obtained by a developer for remediation of groundwater  
38 beneath the subject real property prior to reimbursement of the  
39 remediation costs, provided that the developer has completed any  
40 capital construction or infrastructure required for the remediation of  
41 groundwater on the site.

42 (cf: P.L.2005, c.360, s.1)

43

44 15. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to  
45 read as follows:

46 36. a. The provisions of any other law, or rule or regulation  
47 adopted pursuant thereto, to the contrary notwithstanding, any  
48 developer that enters into a redevelopment agreement pursuant to



1 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for  
2 reimbursement of up to 75 **【%】** percent of the costs of the  
3 remediation of the subject real property pursuant to the provisions  
4 of this section upon the commencement of a business operation, or  
5 the completion of the construction of one or more new residences,  
6 within a redevelopment project.

7 b. To be eligible for reimbursement of the costs of remediation,  
8 a developer shall submit an application, in writing, to the director  
9 for review and certification of the reimbursement. The director  
10 shall review the request for the reimbursement upon receipt of an  
11 application therefor, and shall approve or deny the application for  
12 certification on a timely basis. The director shall also make a  
13 finding of the occupancy rate of the property subject to the  
14 redevelopment agreement in the frequency set forth in the  
15 redevelopment agreement as provided in section 35 of P.L.1997,  
16 c.278 (C.58:10B-27).

17 The director shall certify a developer to be eligible for the  
18 reimbursement if the director finds that:

19 (1) residential construction is complete, or a place of business is  
20 located, in the area subject to the redevelopment agreement that has  
21 generated new tax revenues;

22 (2) the developer had (i) entered into **【a memorandum of**  
23 **agreement, or other】** an oversight document, with the  
24 Commissioner of Environmental Protection, after the developer  
25 entered into the redevelopment agreement, for the remediation of  
26 contamination located on the site of the redevelopment project  
27 pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the  
28 developer is in compliance with the **【memorandum of agreement】**  
29 oversight document, or (ii) complied with the requirements set forth  
30 in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3); and

31 (3) the costs of the remediation were actually and reasonably  
32 incurred. In making this finding the director may consult with the  
33 Department of Environmental Protection.

34 c. When filing an application for certification for a  
35 reimbursement pursuant to this section, the developer shall submit  
36 to the director a certification of the total remediation costs incurred  
37 by the developer for the remediation of the subject property located  
38 at the site of the redevelopment project as provided in the  
39 redevelopment agreement, information concerning the occupancy  
40 rate of the buildings or other work areas located on the property  
41 subject to the redevelopment agreement, and such other information  
42 as the director deems necessary in order to make the certifications  
43 and findings pursuant to this section.

44 (cf: P.L.2009, c.60, s.53)

45  
46 16. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to  
47 read as follows:

1       37. a. To qualify for the certification of reimbursement of the  
2 remediation costs authorized pursuant to section 36 of  
3 P.L.1997, c.278 (C.58:10B-28), a developer shall: (1) enter into [a  
4 memorandum of agreement, or other] an oversight document with  
5 the Commissioner of Environmental Protection; or (2) comply with  
6 the requirements set forth in subsection b. of section 30 of  
7 P.L.2009, c.60 (C.58:10B-1.3), for the remediation of the site of the  
8 redevelopment project.

9       b. Under the [memorandum of agreement, or other] oversight  
10 document, the developer shall agree to perform and complete any  
11 remediation activity as may be required by the Department of  
12 Environmental Protection to ensure the remediation is conducted  
13 pursuant to the regulations adopted by the Department of  
14 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-  
15 1 et al.).

16       c. After the developer has entered into [a memorandum of  
17 agreement, or other] an oversight document with the Commissioner  
18 of Environmental Protection, or after the developer has notified the  
19 Department of Environmental Protection of the name and license  
20 information of the licensed site remediation professional who has  
21 been [hired] retained to perform the remediation as required  
22 pursuant to subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-  
23 1.3), the commissioner shall submit a copy thereof to the developer,  
24 the clerk of the municipality in which the subject property is  
25 located, the Division of Business Assistance, Marketing and  
26 International Trade in the New Jersey Economic Development  
27 Authority, and the director.

28 (cf: P.L.2009, c.60, s.54)

29  
30       17. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to  
31 read as follows:

32       39. a. The State Treasurer shall reimburse the developer the  
33 amount of the remediation costs agreed upon in the redevelopment  
34 agreement, and as provided in sections 35 and 36 of P.L.1997, c.278  
35 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification  
36 by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-  
37 28). The developer shall be entitled to periodic payments from the  
38 fund in an amount, in the frequency, and over the time period as  
39 provided in the redevelopment agreement. Notwithstanding any  
40 other provision of sections 34 through 39 of P.L.1997, c.278  
41 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not  
42 reimburse the developer any amount of the remediation costs from  
43 the fund until the State Treasurer is satisfied that the anticipated tax  
44 revenues from the redevelopment project have been realized by the  
45 State in an amount sufficient to pay for the cost of the  
46 reimbursements.

47       b. A developer shall submit to the director updated remediation  
48 costs actually incurred by the developer for the remediation of the

1 contaminated property located at the site of the redevelopment  
2 project as provided in the redevelopment agreement. The  
3 reimbursement authorized pursuant to this section shall continue  
4 until such time as the aggregate dollar amount of the agreed upon  
5 reimbursement. To remain entitled to the reimbursement authorized  
6 pursuant to this section, the developer shall perform and complete  
7 all remediation activities as may be required pursuant to the  
8 **【memorandum of agreement or other】 oversight 【agreement】**  
9 **document** entered into with the Commissioner of Environmental  
10 Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29)  
11 or as may be required by the licensed site remediation professional  
12 in order to issue a response action outcome for the site. The  
13 Department of Environmental Protection may review the  
14 remediation costs incurred by the developer to determine if they are  
15 reasonable.

16 Reimbursable remediation costs shall include costs that are  
17 incurred in preparing the area of land whereon the contaminated site  
18 is located for remediation and may include costs of dynamic  
19 compaction of soil necessary for the remediation.

20 (cf: P.L.2009, c.60, s.55)

21  
22 18. Section 2 of P.L.2009, c.60 (C.58:10C-2) is amended to read as  
23 follows:

24 2. As used in sections 1 through 29 of P.L.2009, c.60 (C.58:10C-  
25 1 et seq.):

26 "Area of concern" means any location where contaminants are or  
27 were known or suspected to have been discharged, generated,  
28 manufactured, refined, transported, stored, handled, treated, or  
29 disposed, or where contaminants have or may have migrated.

30 "Board" means the Site Remediation Professional Licensing Board  
31 established pursuant to section 3 of P.L.2009, c.60 (C.58:10C-3).

32 "Certified subsurface evaluator" means a person certified to  
33 perform services at the site of an unregulated heating oil tank pursuant  
34 to P.L.1991, c.123 (C.58:10A-24.1 et seq.) as a subsurface evaluator.

35 "Contamination" or "contaminant" means any discharged  
36 hazardous substance as defined pursuant to section 3 of P.L.1976,  
37 c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to  
38 section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined  
39 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

40 "Department" means the Department of Environmental Protection.

41 "Discharge" means any intentional or unintentional action or  
42 omission resulting in the releasing, spilling, leaking, pumping,  
43 pouring, emitting, emptying or dumping of hazardous substances into  
44 the waters or onto the lands of the State, or into waters outside the  
45 jurisdiction of the State when damage may result to the lands, waters  
46 or natural resources within the jurisdiction of the State.

47 "Engineering controls" means any mechanism to contain or  
48 stabilize contamination or ensure the effectiveness of a remedial  
49 action. Engineering controls may include, without limitation, caps,

1 covers, dikes, trenches, leachate collection systems, signs, fences and  
2 physical access controls.

3 "Environmental crime" means any criminal violation of one of the  
4 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-  
5 29 et al.); the "Solid Waste Management Act," P.L.1970, c.39  
6 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the  
7 "Comprehensive Regulated Medical Waste Management Act,"  
8 sections 1 **【though】** through 25 of P.L.1989, c.34 (C.13:1E-  
9 48.1 et seq.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey  
10 Statewide Mandatory Source Separation and Recycling Act,"  
11 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act of  
12 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site  
13 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic  
14 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);  
15 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the  
16 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-  
17 1 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185  
18 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954,  
19 c.212 (C.26:2C-1 et seq.); the "Water Supply Management Act,"  
20 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-  
21 5 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141  
22 (C.58:10-23.11 et seq.); the "Water Pollution Control Act," P.L.1977,  
23 c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the  
24 "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.); the  
25 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-  
26 50 et seq.).

27 "Feasibility study" means a study to develop and evaluate options  
28 for remedial action using data gathered during the remedial  
29 investigation to develop the objectives of the remedial action, and to  
30 develop possible remedial action alternatives, to evaluate those  
31 alternatives and create a list of feasible alternatives, and to analyze the  
32 engineering, scientific, institutional, human health, environmental, and  
33 cost of each selected alternative.

34 "Hazardous substance" means the "environmental hazardous  
35 substances" on the environmental hazardous substance list adopted by  
36 the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4);  
37 such elements and compounds, including petroleum products, which  
38 are defined as such by the department, after public hearing, and which  
39 shall be consistent to the maximum extent possible with, and which  
40 shall include, the list of hazardous substances adopted by the federal  
41 Environmental Protection Agency pursuant to section 311 of the  
42 Federal Water Pollution Control Act Amendments of 1972, Pub. L.92-  
43 500, as amended by the Clean Water Act of 1977, Pub. L.95-217  
44 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by  
45 Congress or the federal Environmental Protection Agency pursuant to  
46 section 307 of that act; and the list of hazardous substances adopted by  
47 the federal Environmental Protection Agency pursuant to section 101  
48 of the "Comprehensive Environmental Response, Compensation and  
49 Liability Act of 1980," Pub. L.96-510 (42 U.S.C. s.9601 et seq.);

1 provided, however, that sewage and sewage sludge shall not be  
2 considered as hazardous substances for the purposes of P.L.1976,  
3 c.141 (C.58:10-23.11 et seq.).

4 "Immediate environmental concern" means **【a condition at a**  
5 **contaminated site where there is】**: (1) confirmed contamination in a  
6 well used for potable purposes at concentrations **【at or】** above the  
7 ground water remediation standards; (2) confirmed contamination that  
8 has migrated into **【an occupied】 a structure <sup>1</sup>【currently used or able to**  
9 **be used for human occupancy】<sup>1</sup>** or a confined space producing a toxic  
10 or harmful atmosphere resulting in an unacceptable human health  
11 exposure, or producing an oxygen-deficient atmosphere, or resulting in  
12 demonstrated physical damage to essential underground services; (3)  
13 confirmed contamination at the site of a nature that either dermal  
14 contact, ingestion, or inhalation of the contamination could result in an  
15 acute human health exposure; or (4) any other **【condition】 confirmed**  
16 **contamination** that poses an immediate threat to the environment or to  
17 the public health and safety.

18 "Institutional controls" means a mechanism used to limit human  
19 activities at or near a contaminated site, or to ensure the effectiveness  
20 of the remedial action over time, when contaminants remain at a  
21 contaminated site in levels or concentrations above the applicable  
22 remediation standard that would allow unrestricted use of that  
23 property. Institutional controls may include, without limitation,  
24 structure, land, and natural resource use restrictions, well restriction  
25 areas, and deed notices.

26 "Licensed site remediation professional" means an individual who  
27 is licensed by the board pursuant to section 7 of P.L.2009, c.60  
28 (C.58:10C-7) or the department pursuant to section 12 of P.L.2009,  
29 c.60 (C.58:10C-12).

30 "Limited restricted use remedial action" means any remedial action  
31 that requires the continued use of institutional controls but does not  
32 require the use of an engineering control.

33 "Person" means an individual, public or private corporation,  
34 company, association, society, firm, partnership, joint stock company,  
35 the State, and any of its political subdivisions or agents.

36 "Person responsible for conducting the remediation" means (1) any  
37 person who executes or is otherwise subject to an oversight document  
38 to remediate a contaminated site, (2) the owner or operator of an  
39 industrial establishment subject to P.L.1983, c.330 (C.13:1K-6 et al.),  
40 for the remediation of a discharge, (3) the owner or operator of an  
41 underground storage tank subject to P.L.1986, c.102 (C.58:10A-  
42 21 et seq.), for the remediation of a discharge, (4) any other person  
43 who discharges a hazardous substance or is in any way responsible for  
44 a hazardous substance, pursuant to section 8 of P.L.1976, c.141  
45 (C.58:10-23.11g), that was discharged at a contaminated site, or (5)  
46 any other person who is remediating a site.

47 "Preliminary assessment" means the first phase in the process of  
48 identifying areas of concern and determining whether contaminants are

1 or were present at a site or have migrated or are migrating from a site,  
2 and shall include the initial search for and evaluation of, existing site  
3 specific operational and environmental information, both current and  
4 historic, to determine if further investigation concerning the  
5 documented, alleged, suspected or latent discharge of any contaminant  
6 is required. The evaluation of historic information shall be conducted  
7 from 1932 to the present, except that the department may require the  
8 search for and evaluation of additional information relating to  
9 ownership and use of the site prior to 1932 if such information is  
10 available through diligent inquiry of the public records.

11 "Receptor evaluation" means an evaluation of the potential impact  
12 of contamination on humans and environmentally sensitive natural  
13 resources.

14 "Remedial action" means those actions taken at a site or offsite if a  
15 contaminant has migrated or is migrating therefrom, as may be  
16 required by the department, including the removal, treatment,  
17 containment, transportation, securing, or other engineering or  
18 treatment measures, whether to an unrestricted use or otherwise,  
19 designed to ensure that any discharged contaminant at the site or that  
20 has migrated or is migrating from the site, is remediated in compliance  
21 with the applicable health risk or environmental standards.

22 "Remedial action workplan" means a plan for the remedial action  
23 to be undertaken at a site, or at any area to which a discharge  
24 originating at a site is migrating or has migrated; a description of the  
25 remedial action to be used to remediate a site; a time schedule and cost  
26 estimate of the implementation of the remedial action; and any other  
27 information the department deems necessary.

28 "Remedial investigation" means a process to determine the nature  
29 and extent of a discharge of a contaminant at a site or a discharge of a  
30 contaminant that has migrated or is migrating from the site and the  
31 problems presented by a discharge, and may include data collected,  
32 site characterization, sampling, monitoring, and the gathering of any  
33 other sufficient and relevant information necessary to determine the  
34 necessity for remedial action and to support the evaluation of remedial  
35 actions if necessary.

36 "Remediation" or "remediate" means all [necessary] actions to  
37 investigate [and] , clean up , or respond to any known, suspected, or  
38 threatened discharge of contaminants, including [, as necessary,] the  
39 preliminary assessment, site investigation, remedial investigation, and  
40 remedial action, or any portion thereof, provided, however, that  
41 "remediation" or "remediate" shall not include the payment of  
42 compensation for damage to, or loss of, natural resources.

43 "Remediation standards" means the combination of numeric  
44 standards that establish a level or concentration, and narrative  
45 standards to which contaminants must be treated, removed, or  
46 otherwise cleaned for soil, groundwater, or surface water, as provided  
47 by the department pursuant to section 35 of P.L.1993, c.139

1 (C.58:10B-12) in order to meet the health risk or environmental  
2 standards.

3 "Response action outcome" means a written determination by a  
4 licensed site remediation professional that the contaminated site was  
5 remediated in accordance with all applicable statutes and regulations,  
6 and based upon an evaluation of the historical use of the site, or of any  
7 area of concern at that site, as applicable, and any other investigation  
8 or action the department deems necessary, there are no contaminants  
9 present at the site, or at any area of concern, at any other site to which  
10 a discharge originating at the site has migrated, or that any  
11 contaminants present at the site or that have migrated from the site  
12 have been remediated in accordance with applicable remediation  
13 regulations, and all applicable permits and authorizations have been  
14 obtained.

15 "Restricted use remedial action" means any remedial action that  
16 requires the continued use of engineering and institutional controls in  
17 order to meet the established health risk or environmental standards.

18 "Retained" means hired, individually or through a firm or other  
19 person, by or on behalf of a person responsible for conducting  
20 remediation, to perform, manage, or supervise remediation or to  
21 periodically review and evaluate a remediation performed by other  
22 persons.

23 "Site investigation" means the collection and evaluation of data  
24 adequate to determine whether or not discharged contaminants exist at  
25 a site or have migrated or are migrating from the site at levels in  
26 excess of the applicable remediation standards. A site investigation  
27 shall be developed based upon the information collected pursuant to  
28 the preliminary assessment.

29 "Small business" means a business entity that does not acquire  
30 property for development or redevelopment, and that, during the prior  
31 three tax years, employed not more than 50 full-time employees or the  
32 equivalent thereof, and qualifies as a small business concern within the  
33 meaning of the federal "Small Business Act," 15 U.S.C. s.631 et seq.

34 "Temporary license" means a license issued by the department  
35 pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12) to conduct  
36 business as a licensed site remediation professional in the State.

37 "Unregulated heating oil tank" means any one or combination of  
38 tanks, including appurtenant pipes, lines, fixtures, and other related  
39 equipment, used to contain an accumulation of heating oil for on-site  
40 consumption in a residential building, or those tanks with a capacity of  
41 2,000 gallons or less used to store heating oil for on-site consumption  
42 in a nonresidential building, the volume of which, including the  
43 volume of the appurtenant pipes, lines, fixtures and other related  
44 equipment, is 10 **【%】** percent or more below the ground.

45 "Waters" means the ocean and its estuaries to the seaward limit of  
46 the State's jurisdiction, all springs, streams and bodies of surface or  
47 groundwater, whether natural or artificial, within the boundaries of the  
48 State.

49 (cf: P.L.2009, c.60, s.2)

1       19. Section 7 of P.L.2009, c.60 (C.58:10C-7) is amended to read as  
2 follows:

3       7. a. The board shall establish a licensing program and licensing  
4 requirements for site remediation professionals, and shall oversee their  
5 licensing and performance.

6       b. The board shall establish standards for education, training and  
7 experience that shall be required of any person who applies for a  
8 license or a license renewal. The board shall conduct examinations to  
9 certify that an applicant possesses sufficient knowledge of the State  
10 laws, rules and regulations, standards and requirements applicable to  
11 site remediation and that the applicant is qualified to obtain a license  
12 or a license renewal. The board shall also adopt standards for the  
13 professional conduct of licensed site remediation professionals  
14 pursuant to the provisions of section 16 of P.L.2009, c.60 (C.58:10C-  
15 16). The board shall require an applicant to submit references to ensure  
16 that the applicant meets the standards and requirements established for  
17 training, experience and professional conduct by licensed site  
18 remediation professionals. No person may take the licensing  
19 examination until the board determines that the applicant meets the  
20 standards for education, training and experience.

21       c. An application for a license shall be made in a manner and on  
22 such forms as may be prescribed by the board. The filing of an  
23 application shall be accompanied by an application fee that shall cover  
24 the costs of processing the application and developing and conducting  
25 the examinations. The board may also charge an annual license fee  
26 that shall cover the costs of the licensing program.

27       d. An applicant for a site remediation professional license shall  
28 demonstrate to the board that the applicant:

29       (1) holds a bachelor's degree or higher in natural, chemical or  
30 physical science, or an engineering degree in a discipline related to site  
31 remediation, from an accredited institution of higher education, or has  
32 been issued a temporary license to remediate discharges from  
33 underground storage tanks only pursuant to subsection d. of section 13  
34 of P.L.2009, c.60 (C.58:10C-13) and meets the other requirements  
35 established in this subsection and in subsection f. of this section;

36       (2) has eight years of full-time professional experience, as  
37 described in subsection e. of this section, in the field of site  
38 remediation, of which five years shall have occurred in New Jersey  
39 and at least three years shall have occurred in New Jersey  
40 **[immediately]** within the five years prior to submission of the  
41 application;

42       (3) has a minimum of 5,000 hours of relevant professional  
43 experience within the State over the five years immediately prior to  
44 submission of the application that is of a professional grade and  
45 character that indicates the applicant is competent to issue a response  
46 action outcome;

47       (4) has attended and completed the minimum environmental health  
48 and safety education and training provided pursuant to 29 C.F.R.



1 Section 1910.120 no more than one year prior to submission of an  
2 application for a license pursuant to this section;

3 (5) has attended and completed a course approved by the  
4 department on the State's rules and regulations concerning the  
5 technical requirements for site remediation no more than three years  
6 prior to submission of the application;

7 (6) has not been convicted of, or <sup>1</sup>~~['plead]~~ pled<sup>1</sup> guilty to, an  
8 environmental crime, any similar or related <sup>1</sup>~~['criminal offense]~~ crime<sup>1</sup>  
9 under federal or state law, or any crime involving fraud, breach of  
10 trust, theft by deception, forgery, or any <sup>1</sup>~~crime or~~ offense that would  
11 qualify the person for registration pursuant to section 2 of P.L.1994,  
12 c.133 (C.2C:7-2), or any other crime <sup>1</sup>~~['or offense']~~ involving moral  
13 turpitude, or any similar or related offense under federal or state law .  
14 For the purposes of this section, a conviction or plea of guilty shall  
15 include a non vult, nolo contendere, no contest, or finding of guilt by a  
16 judge or jury; and

17 (7) has not had a professional license or <sup>1</sup>~~professional~~  
18 certification revoked by any state licensing board or any other  
19 professional licensing agency within the previous 10 years , and has  
20 not surrendered a professional license or <sup>1</sup>~~professional~~ certification in  
21 response to a disciplinary investigation within the previous 10 years.

22 e. For the purposes of this section, "full-time professional  
23 experience" includes experience in which the applicant is required to  
24 apply scientific or engineering principles to contaminated site  
25 remediation where the resulting conclusions form the basis for reports,  
26 studies or other documents connected with the remediation of a  
27 contaminated site. The board may consider the applicant's work  
28 activities, field of practice, duration of employment, and work  
29 products prepared in determining the credit to be allowed for  
30 professional experience. The board may allow applicants with  
31 relevant advanced degrees up to two years of credit for professional  
32 experience, of which one year of credit may be awarded for applicants  
33 who have earned a master's degree in a relevant field of study and up  
34 to two years of credit may be awarded for applicants who have earned  
35 a doctorate degree in a relevant field of study.

36 f. The board shall authorize an applicant who has been issued a  
37 temporary license pursuant to subsection d. of section 13 of P.L.2009,  
38 c.60 (C.58:10C-13), who meets all other requirements established  
39 pursuant to this section but does not hold a bachelor's degree from an  
40 accredited institution of higher education to take the licensing  
41 examination to qualify for a license pursuant to this section. An  
42 applicant who does not satisfactorily complete the examination  
43 authorized pursuant to this subsection shall not be authorized to  
44 reapply for a license.

45 g. No person may obtain a license unless that person meets the  
46 standards established for education, training and experience required  
47 in subsection b. of this section, satisfactorily passes the examination,  
48 and satisfies any other requirements established by the board to ensure

1 that licensed site remediation professionals meet the requirements  
2 established pursuant to this section.

3 (cf: P.L.2009, c.60, s.7)

4  
5 20. Section 11 of P.L.2009, c.60 (C.58:10C-11) is amended to  
6 read as follows:

7 11. a. No person shall be, act as, advertise as, or hold himself  
8 out to be, or represent himself as being, a licensed site remediation  
9 professional unless that person has been issued a valid license  
10 pursuant to P.L.2009, c.60 (C.58:10C-1 et al.).

11 b. Except as provided in subsection d. of section 30 of  
12 P.L.2009, c.60 (C.58:10B-1.3), a person who is not a licensed site  
13 remediation professional shall not perform remediation unless the  
14 remediation is managed, supervised, or periodically reviewed and  
15 evaluated by a licensed site remediation professional.

16 (cf: P.L.2009, c.60, s.11)

17  
18 21. Section 14 of P.L.2009, c.60 (C.58:10C-14) is amended to  
19 read as follows:

20 14. a. For any site for which a licensed site remediation  
21 professional is required to be **【hired】** retained pursuant to the  
22 provisions of section 30 of P.L.2009, c.60 (C.58:10B-1.3), the  
23 person responsible for conducting the remediation shall certify all  
24 documents submitted to the department concerning the remediation  
25 of the contaminated site. The licensed site remediation professional  
26 shall certify that the work was performed, the licensed site  
27 remediation professional managed, supervised, or performed the  
28 work that is the basis of the submission, and that the work and the  
29 submitted documents are consistent with all applicable remediation  
30 requirements adopted by the department.

31 b. A licensed site remediation professional shall certify  
32 electronic submissions made to the department concerning the  
33 remediation of a contaminated site. The licensed site remediation  
34 professional shall attest that no other person is authorized or able to  
35 use any password, encryption method, or electronic signature  
36 provided to the licensed site remediation professional by the board  
37 or the department.

38 c. The licensed site remediation professional shall employ the  
39 following remediation requirements in providing professional  
40 services for the remediation of contaminated sites:

41 (1) The licensed site remediation professional shall make each  
42 decision concerning a contaminated site in order to meet the  
43 following standards:

44 (a) health risk and environmental standards established pursuant  
45 to section 35 of P.L.1993, c.139 (C.58:10B-12);

46 (b) remediation standards adopted by the department pursuant to  
47 section 35 of P.L.1993, c.139 (C.58:10B-12);

1 (c) maximum contaminant levels for building interiors adopted  
2 by the Department of Health and Senior Services pursuant to  
3 section 1 of P.L.2007, c.1 (C.52:27D-130.4) as applicable; and

4 (d) any other applicable standards adopted pursuant to law.

5 (2) The licensed site remediation professional shall apply the  
6 following regulations:

7 (a) rules and regulations adopted by the Site Remediation  
8 Professional Licensing Board pursuant to section 6 of P.L.2009,  
9 c.60 (C.58:10C-6);

10 (b) technical standards for site remediation adopted by the  
11 department pursuant to P.L.1993, c.139 (C.58:10B-1 et al.);

12 **[(b)]** (c) mandatory remediation timeframes and expedited site  
13 specific timeframes adopted by the department pursuant to section  
14 28 of P.L.2009, c.60 (C.58:10C-28); **[and]**

15 **[(c)]** (d) presumptive remedies adopted by the department  
16 pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12); and

17 (e) any other applicable rules and regulations concerning the  
18 remediation.

19 (3) The licensed site remediation professional shall apply any  
20 available and appropriate technical guidelines concerning site  
21 remediation as issued by the department. The department shall  
22 provide interested parties the opportunity to participate in the  
23 development and review of technical guidelines issued for the  
24 remediation of contaminated sites.

25 (4) When there is no specific requirement provided by the  
26 technical standards for site remediation adopted by the department,  
27 and guidelines issued by the department are not appropriate or  
28 necessary, in the professional judgment of the licensed site  
29 remediation professional, to meet the remediation requirements  
30 listed in paragraph (1) of this subsection, the licensed site  
31 remediation professional may use the following additional  
32 guidelines to make decisions regarding a remediation, and shall set  
33 forth justification , including, if applicable, the scientific, technical,  
34 or other justification, for such use, in the relevant submittal to the  
35 department:

36 (a) relevant guidance from the federal Environmental Protection  
37 Agency or other states; and

38 (b) other relevant, applicable, and appropriate methods and  
39 practices that ensure the protection of the public health and safety,  
40 and of the environment.

41 d. Upon completion of the remediation, the licensed site  
42 remediation professional shall issue a response action outcome to  
43 the person responsible for conducting the remediation when, in the  
44 opinion of the licensed site remediation professional, the site has  
45 been remediated so that it is in compliance with all applicable  
46 statutes, rules and regulations protective of public health and safety  
47 and the environment. The licensed site remediation professional

1 shall file the response action outcome with the department when it  
2 is issued to the person responsible for conducting the remediation.

3 (cf: P.L.2009, c.60, s.14)

4  
5 22. Section 16 of P.L.2009, c.60 (C.58:10C-16) is amended to  
6 read as follows:

7 16. a. A licensed site remediation professional's highest priority  
8 in the performance of professional services shall be the protection  
9 of public health and safety and the environment.

10 b. A licensed site remediation professional shall exercise  
11 reasonable care and diligence, and shall apply the knowledge and  
12 skill ordinarily exercised by licensed site remediation professionals  
13 in good standing practicing in the State at the time the services are  
14 performed.

15 c. A licensed site remediation professional shall not provide  
16 professional services outside the areas of professional competency,  
17 unless the licensed site remediation professional has relied upon the  
18 technical assistance of another professional whom the licensed site  
19 remediation professional has reasonably determined to be qualified  
20 by education, training, and experience. A licensed site remediation  
21 professional shall not perform services that constitute the practice  
22 of professional engineering unless the licensed site remediation  
23 professional is a professional engineer licensed in the State.

24 d. A licensed site remediation professional retained by a person  
25 responsible for conducting the remediation shall notify the  
26 department within 15 calendar days after being retained. In  
27 addition, a licensed site remediation professional shall notify the  
28 department within 15 calendar days after being released from  
29 responsibility for a remediation if the release occurs prior to  
30 issuance of the response action outcome for the site by the licensed  
31 site remediation professional.

32 e. A licensed site remediation professional and the person  
33 responsible for conducting the remediation shall correct any  
34 deficiency the department identifies in a document submitted  
35 concerning a remediation. The deficiency shall be corrected in  
36 accordance with timeframes established by the department.

37 f. A licensed site remediation professional may complete any  
38 phase of remediation based on remediation work performed under  
39 the supervision of another licensed site remediation professional,  
40 provided that the licensed site remediation professional: (1) reviews  
41 all available documentation on which he relies; (2) conducts a site  
42 visit to observe current conditions and to verify the status of as  
43 much of the work as is reasonably observable; and (3) concludes, in  
44 the exercise of independent professional judgment, that there is  
45 sufficient information upon which to complete any additional phase  
46 of remediation and prepare workplans and reports related thereto.

47 g. A licensed site remediation professional who has taken over  
48 the responsibility for the remediation of a contaminated site from  
49 another licensed site remediation professional shall correct all

1 deficiencies in a document submitted by the previous licensed site  
2 remediation professional identified by the department in accordance  
3 with timeframes established by the department.

4 h. A licensed site remediation professional shall not certify any  
5 document submitted to the department unless the licensed site  
6 remediation professional : (1) believes that the information in the  
7 submission is true, accurate, and complete; and (2) has managed,  
8 supervised or performed the work that is the basis of the  
9 submission, or has periodically reviewed and evaluated the work  
10 performed by other persons that forms the basis for the information  
11 in the submission, or has completed the work of another licensed  
12 site remediation professional and has concluded such work is  
13 reliable pursuant to subsection f. of this section. A licensed site  
14 remediation professional shall not knowingly make any false  
15 statement, representation, or certification in any document or  
16 information required to be submitted to the board or the department.

17 i. A licensed site remediation professional shall exercise  
18 independent professional judgment, comply with the requirements  
19 and procedures set forth in the provisions of P.L.2009, c.60  
20 (C.58:10C-1 et al.), make a good faith and reasonable effort to  
21 identify and obtain the relevant and material facts, data, reports and  
22 other information evidencing conditions at a contaminated site for  
23 which he is **【responsible】** retained that is in possession of the  
24 owner of the property, or that is otherwise available, and identify  
25 and obtain whatever additional data and other information as the  
26 licensed site remediation professional deems necessary. The  
27 licensed site remediation professional shall disclose and explain in  
28 any document submitted to the department any facts, data,  
29 information, qualifications, or limitations known by the licensed  
30 site remediation professional that are not supportive of the  
31 conclusions reached in the document.

32 j. If a licensed site remediation professional **【identifies】**  
33 obtains specific knowledge of a condition **【at a contaminated site】**  
34 that in his independent professional judgment is an immediate  
35 environmental concern, then the licensed site remediation  
36 professional shall: (1) immediately verbally advise , and confirm in  
37 writing to, the person responsible for conducting the remediation of  
38 that person's duty to notify the department of the condition ,  
39 provided the person is known to the licensed site remediation  
40 professional; and (2) immediately notify the department of the  
41 condition by calling the department's telephone hotline.

42 k. If a licensed site remediation professional retained to  
43 perform remediation at a site or any portion of a site obtains  
44 specific knowledge that a discharge has occurred **【on a**  
45 **contaminated site for which he is responsible】** at any location on  
46 the site, the licensed site remediation professional shall: (1) notify  
47 the person responsible for conducting the remediation of the  
48 existence of the discharge; and (2) notify the department of the

1 discharge by calling the department's telephone hotline. The person  
2 responsible for conducting the remediation shall also be responsible  
3 for notifying the department of the existence of the discharge. The  
4 provisions of this subsection shall not apply to a discharge that may  
5 be a result of the existence of historic fill material.

6 1. If a licensed site remediation professional learns of an action  
7 or decision by a client that results in a deviation from the remedial  
8 action workplan or other report concerning the remediation  
9 developed by the licensed site remediation professional, the  
10 licensed site remediation professional shall promptly notify the  
11 client and the department, in writing, of the deviation.

12 m. A licensed site remediation professional shall not reveal  
13 information obtained in a professional capacity, except as may be  
14 authorized or required by law, without the prior consent of the  
15 client, if the client has notified the licensed site remediation  
16 professional, in writing, that the information is confidential. The  
17 provisions of this subsection shall not apply to information that is in  
18 the public domain.

19 n. A licensed site remediation professional who learns of  
20 material facts, data or other information subsequent to the  
21 completion of a report concerning a phase of remediation, which  
22 would result in a report with material differences from the report  
23 submitted, shall promptly notify the client and the department in  
24 writing of those facts, data, information, and circumstances.

25 o. A licensed site remediation professional who succeeds  
26 another licensed site remediation professional before the issuance of  
27 a response action outcome, and who learns of material facts, data or  
28 other information concerning a phase of the remediation for which a  
29 report was submitted to the department and the material facts, data  
30 or other information were not disclosed in the report, shall promptly  
31 notify the client and the department in writing of those facts, data,  
32 information, and circumstances.

33 p. A licensed site remediation professional shall not allow the  
34 use of his name by a person, and shall not associate with a person in  
35 a business venture, if the licensed site remediation professional  
36 knows or should know that the person engages in fraudulent or  
37 dishonest business or professional practices regarding the  
38 professional responsibilities of a licensed site remediation  
39 professional.

40 q. A licensed site remediation professional shall cooperate in  
41 an investigation by the board or the department by promptly  
42 furnishing, in response to formal requests, orders or subpoenas, any  
43 information the board or the department, or persons duly authorized  
44 by the board or the department, deems necessary to perform its  
45 duties. In an investigation by the board of a license application or a  
46 license suspension or revocation, a licensed site remediation  
47 professional shall not:

48 (1) knowingly make a false statement of material fact;

1 (2) fail to disclose a fact necessary to correct a material  
2 misunderstanding known by the licensed site remediation  
3 professional to have arisen in the matter;

4 (3) knowingly and materially falsify, tamper with, alter, conceal,  
5 or destroy any document, data record, remedial system, or  
6 monitoring device that is relevant to the investigation, without  
7 obtaining the prior approval of the department; or

8 (4) knowingly allow or tolerate any employee, agent, or  
9 contractor of the licensed site remediation professional to engage in  
10 any of the foregoing activities.

11 r. A licensed site remediation professional shall be jointly  
12 responsible for a violation of any provision of this section  
13 committed by another licensed site remediation professional whose  
14 work he supervises or reviews if:

15 (1) the licensed site remediation professional orders, directs, or  
16 agrees to the provision of professional services conducted or  
17 prepared by another licensed site remediation professional under his  
18 supervision;

19 (2) the licensed site remediation professional knows that the  
20 professional services constitute a violation of this section; and

21 (3) the licensed site remediation professional fails to take  
22 reasonable steps to avoid or mitigate the violation.

23 s. A licensed site remediation professional shall comply with  
24 all conditions imposed by the board as a result of a license  
25 suspension or other disciplinary proceeding conducted by the board.

26 t. A licensed site remediation professional shall inform a client  
27 or prospective client of any relevant and material assumptions,  
28 limitations, or qualifications underlying their communication.  
29 Evidence that a licensed site remediation professional has provided  
30 the client or prospective client with timely written documentation of  
31 these assumptions, limitations, or qualifications shall be deemed by  
32 the board or the department to have satisfied the requirements of  
33 this subsection.

34 u. A licensed site remediation professional shall not state or  
35 imply, as an inducement or a threat to a client or prospective client,  
36 an ability to improperly influence a government agency or official.

37 v. In any description of qualifications, experience, or ability to  
38 provide services, a licensed site remediation professional shall not  
39 knowingly:

40 (1) make a material misrepresentation of fact;

41 (2) omit a fact when the omission results in a materially  
42 misleading description; or

43 (3) make a statement that, in the opinion of the board, is likely  
44 to create an unjustified expectation about results the licensed site  
45 remediation professional may achieve, or state or imply that the  
46 licensed site remediation professional may achieve results by means  
47 that violate the provisions of applicable environmental statutes,  
48 rules or regulations, including the provisions of P.L.2009, c.60  
49 (C.58:10C-1 et al.).

1 w. A licensed site remediation professional shall provide any  
2 notification to the board or the department required pursuant to this  
3 section, even if the licensed site remediation professional is  
4 discharged by the client prior to doing so.

5 x. A licensed site remediation professional shall not accept  
6 compensation, financial or otherwise, for professional services  
7 pertaining to a contaminated site from two or more persons whose  
8 interests are adverse or conflicting unless the circumstances are  
9 fully disclosed and agreed to by all clients engaging the licensed  
10 site remediation professional.

11 y. A licensed site remediation professional shall not be a  
12 salaried employee of the person responsible for conducting the  
13 remediation, or any related entities, for which the licensed site  
14 remediation professional is providing remediation services.

15 z. A licensed site remediation professional shall not allow any  
16 ownership interest, compensation, or promise of continued  
17 employment, of the licensed site remediation professional or any  
18 immediate family member, to affect the professional services  
19 provided by the licensed site remediation professional.

20 aa. Except as provided in subsection d. of section 30 of  
21 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation  
22 professional shall not facilitate, aid, assist, or cooperate with any  
23 person in retaining or arranging for the retention of any person who  
24 is not a licensed site remediation professional to perform  
25 remediation, unless the remediation is managed, supervised, or  
26 periodically reviewed and evaluated by a licensed site remediation  
27 professional retained for that purpose, and the department has been  
28 notified of the retention.

29 bb. Except as provided in subsection d. of section 30 of  
30 P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation  
31 professional shall not manage, supervise, perform, engage, or  
32 participate in remediation unless:

33 (1) the licensed site remediation professional has been retained  
34 by a person responsible for conducting the remediation, and the  
35 department has been notified of the retention; or

36 (2) the remediation is being managed, supervised, or performed  
37 by another licensed site remediation professional retained by the  
38 person responsible for conducting the remediation, and the  
39 department has been notified of the retention of the other licensed  
40 site remediation professional.

41 (cf: P.L.2009, c.60, s.16)

42  
43 23. (New section) If a licensed site remediation professional  
44 obtains specific knowledge of a condition in an unoccupied structure,  
45 that, in **'[his] the licensed site remediation professional's'**  
46 independent professional judgment, constitutes an immediate  
47 environmental concern, and the person responsible for conducting the  
48 remediation provides to the department a written certification from the  
49 property owner that the building (i) is not occupied, (ii) will not be



1 occupied, and (iii) will be demolished, then no further remediation  
2 relative to the immediate environmental concern in the unoccupied  
3 structure shall be required, provided the conditions of the certification  
4 are maintained. Nothing in this section shall be construed to limit the  
5 responsibility of a ~~'[license]~~ licensed<sup>1</sup> site remediation professional to  
6 comply with the notification requirements of subsection j. of section  
7 16 of P.L.2009, c.60 (C.58:10C-16), or the responsibility of a person  
8 to report a discharge pursuant to P.L.1976, c.141 (C.58:10-  
9 23.11 et seq.). The department shall prescribe the form and manner of  
10 the written certification pursuant to this section.

11  
12 24. Section 19 of P.L.2009, c.60 (C.58:10C-19) is amended to  
13 read as follows:

14 19. a. The department shall establish a permit program to  
15 regulate the operation, maintenance and inspection of engineering  
16 or institutional controls and related systems installed as part of a  
17 remedial action of a contaminated site. The department may require  
18 periodic monitoring, inspections, and maintenance by the person  
19 responsible for the engineering or institutional controls and the  
20 submission of certifications regarding those activities. The  
21 department may issue a permit, permit by rule, or general permit  
22 pursuant to this section.

23 b. The department may require any person who is responsible  
24 for the monitoring, operation, and maintenance of an engineering or  
25 institutional control implemented before the date of enactment of  
26 P.L.2009, c.60 (C.58:10C-1 et al.), and any person required to  
27 submit a certification on a biennial basis pursuant to section 6 of  
28 P.L.1997, c.278 (C.58:10B-13.1), that engineering or institutional  
29 controls and related systems are properly maintained and that  
30 periodic monitoring for compliance is conducted, to obtain a permit  
31 pursuant to this section.

32 c. (1) Except as provided in paragraph (2) of this subsection,  
33 the department may require that a person issued a permit pursuant  
34 to this section maintain insurance, financial assurance or another  
35 financial instrument to guarantee that funding is available to  
36 operate, maintain, and inspect the engineering controls installed as  
37 part of a remedial action of a contaminated site for the period that  
38 such controls are required. The person required to maintain the  
39 funding source pursuant to this section may petition the department  
40 on an annual basis to decrease the amount of funding required to be  
41 maintained.

42 (2) A government entity, a person who is not otherwise liable  
43 for cleanup and removal costs pursuant to P.L.1976, c.141  
44 (C.58:10-23.11 et seq.) who purchases contaminated property  
45 before the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.)  
46 and undertakes a remediation of the property, a person who  
47 undertakes a remediation at their primary or secondary residence,  
48 the owner or operator of a child care center licensed pursuant to  
49 P.L.1983, c.492 (C.30:5B-1 et seq.) who performs a remediation at

1 the licensed child care center, the person responsible for conducting  
2 a remediation at a public school or private school as defined in  
3 N.J.S.18A:1-1, or a charter school established pursuant to P.L.1995,  
4 c.426 (C.18A:36A-1 et seq.), or the owner or operator of a small  
5 business responsible for performing a remediation at their business  
6 property, shall not be required to establish or maintain a funding  
7 source pursuant to this section, for the operation, maintenance, and  
8 inspection of the engineering controls installed as part of a remedial  
9 action of a contaminated site.

10 d. A person who is issued a permit pursuant to this section  
11 shall retain a licensed site remediation professional to manage,  
12 supervise, or perform the requirements of the permit for the  
13 duration of the permit.

14 e. The department may charge, in accordance with a schedule  
15 adopted pursuant to the "Administrative Procedure Act," P.L.1968,  
16 c.410 (C.52:14B-1 et seq.), reasonable application fees to cover the  
17 costs of processing the application, and reasonable annual fees to  
18 cover the costs of the administration and enforcement of the  
19 permits.

20 (cf: P.L.2009, c.60, s.19)

21  
22 25. Section 20 of P.L.2009, c.60 (C.58:10C-20) is amended to  
23 read as follows:

24 20. A licensed site remediation professional shall , for each  
25 contaminated site, maintain and preserve all data, documents and  
26 information concerning the remediation **【activities at each**  
27 **contaminated site】** that the licensed site remediation professional  
28 has **【worked on】** prepared or relied upon, including but not limited  
29 to, technical records and contractual documents, raw sampling and  
30 monitoring data, whether or not the data and information, including  
31 technical records and contractual documents, were developed by the  
32 licensed site remediation professional or the licensee's divisions,  
33 employees, agents, accountants, contractors, or attorneys, that relate  
34 in any way to the contamination at the site. **【Three】** An electronic  
35 **【copies】** copy of the records shall be submitted to the department at  
36 the time the response action outcome is filed with the department.

37 (cf: P.L.2009, c.60, s.20)

38  
39 26. Section 27 of P.L.2009, c.60 (C.58:10C-27) is amended to read  
40 as follows:

41 27. a. Except as provided in section 1 of P.L.2013, c.283  
42 (C. 58:10C-27.1), and this section, the department shall undertake  
43 direct oversight of a remediation of a contaminated site under the  
44 following conditions:

45 (1) the person responsible for conducting the remediation has a  
46 history of noncompliance with the laws concerning remediation, or  
47 any rule or regulation adopted pursuant thereto, that includes the  
48 issuance of at least two enforcement actions after the date of

1 enactment of P.L.2009, c.60 (C.58:10C-1 et al.) during any five-year  
2 period concerning a remediation;

3 (2) the person responsible for conducting the remediation at a  
4 contaminated site has failed to meet a mandatory remediation  
5 timeframe or an expedited site specific timeframe adopted by the  
6 department pursuant to section 28 of P.L.2009, c.60 (C.58:10C-28),  
7 including any extension thereof granted by the department, or a  
8 schedule established pursuant to an administrative order or court order;  
9 or

10 (3) unless a longer period has been ordered by a court, the person  
11 responsible for conducting the remediation has, prior to the date of  
12 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), failed to complete the  
13 remedial investigation of the entire contaminated site 10 years after the  
14 discovery of a discharge at the site and has failed to complete the  
15 remedial investigation of the entire contaminated site within five years  
16 after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.).

17 If a person responsible for conducting a remediation fails to meet  
18 the conditions established in paragraph (3) of this subsection, or a  
19 requirement established pursuant to subsection a. of section 1 of  
20 P.L.2013, c.283 (C.58:10C-27.1), the department shall not undertake  
21 direct oversight of the contaminated site if the person demonstrates,  
22 and the department finds, that:

23 (1) the person was unable to meet the applicable timeframe  
24 because '【he】 the person' was unable to enter the contaminated site  
25 because '【he】 the person' does not own the property, and the person  
26 took all appropriate and timely action pursuant to section 40 of  
27 P.L.1993, c.139 (C.58:10B-16) prior to the applicable timeframe; or

28 (2) the contaminated site is subject to federal oversight, the person  
29 has made timely submissions to the department, and the person was  
30 unable to meet the applicable timeframe due to the performance of  
31 additional review by the department pursuant to subsection c. of  
32 section 21 of P.L.2009, c.60 (C.58:10C-21).

33 As used in this subsection, "enforcement action" means an  
34 administrative order, a notice of civil administrative penalty, or a court  
35 order.

36 b. The department may undertake direct oversight of a  
37 remediation of a contaminated site under the following conditions:

38 (1) the contamination at the site includes chromate chemical  
39 production waste;

40 (2) the department determines that more than one environmentally  
41 sensitive natural resource has been injured by contamination from the  
42 site;

43 (3) the site has contributed to sediments contaminated by  
44 polychlorinated biphenyl, mercury, arsenic, or dioxin in a surface  
45 water body; or

46 (4) the site is ranked by the department in the category requiring  
47 the highest priority pursuant to the ranking system developed pursuant  
48 to section 2 of P.L.1982, c.202 (C.58:10-23.16).

1 c. For any site subject to direct oversight by the department  
2 pursuant to this section:

3 (1) the department shall review each document submitted by a  
4 licensed site remediation professional and shall approve or deny the  
5 submission;

6 (2) a feasibility study shall be performed and submitted to the  
7 department for approval;

8 (3) the department shall select the remedial action for the site;

9 (4) the person responsible for conducting the remediation shall  
10 establish a remediation **【trust fund】** funding source other than a self-  
11 guarantee pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) in  
12 the amount of the estimated cost of the remediation;

13 (5) all disbursements of funds from the remediation **【trust fund】**  
14 funding source shall require prior approval by the department;

15 (6) all submissions prepared by the licensed site remediation  
16 professional concerning the remediation required by the department  
17 shall be provided simultaneously to the department and the person  
18 responsible for conducting the remediation; and

19 (7) the person responsible for conducting the remediation shall  
20 implement a public participation plan approved by the department to  
21 solicit public comment from the members of the surrounding  
22 community concerning the remediation of the site.

23 d. The department shall issue guidelines establishing specific  
24 criteria for the conditions under which a site may be subject to direct  
25 oversight pursuant to subsection b. of this section.

26 e. (1) Any oversight procedure, remedy, or other obligation in  
27 P.L.2009, c.60 (C.58:10C-1 et al.) shall not affect a remediation  
28 conducted pursuant to and in compliance with a settlement of litigation  
29 to which the department is a party if the settlement (a) occurred prior  
30 to the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.), or (b) is  
31 a settlement of litigation pending on the date of enactment of  
32 P.L.2009, c.60 (C.58:10C-1 et al.).

33 (2) For any litigation pending or settled on the date of enactment  
34 of P.L.2009, c.60 (C.58:10C-1 et al.), concerning a remediation  
35 performed pursuant to the "Resource Conservation and Recovery Act,"  
36 42 U.S.C. s.6921 et seq., nothing in P.L.2009, c.60 (C.58:10C-1 et al.)  
37 shall affect an oversight procedure, remedy, or other obligation  
38 imposed by a federal administrative order or federal court order.

39 f. When a contaminated site is subject to direct oversight  
40 pursuant to this section, the requirements of direct oversight shall run  
41 with the site, regardless of who owns the property, and regardless of  
42 whether there is a transfer of ownership of the property.

43 g. (1) The department may modify the direct oversight  
44 requirements of subsection c. of this section for a contaminated site if:

45 (a) the person responsible for conducting the remediation  
46 demonstrates financial hardship that prevents the performance of the  
47 remediation due to the imposition of direct oversight pursuant to this  
48 section; or

1       (b) there is a public emergency <sup>1</sup>**resulting from a natural**  
2 **disaster** <sup>1</sup>, as declared by the Governor or the President of the United  
3 States, or an official authorized to act on their behalf, that resulted in a  
4 delay in meeting the mandatory or expedited site-specific timeframe or  
5 other condition that triggered direct oversight.

6       (2) The department may modify the direct oversight requirements  
7 of subsection c. of this section for a contaminated site if the  
8 department makes a written determination that the modification is in  
9 the public interest and protective of the public health and safety and  
10 the environment. At least 60 days prior to making a modification  
11 pursuant to this paragraph, the department shall publish its written  
12 determination and the proposed modification to the requirements of  
13 direct oversight, including the reasons for its determination, on the  
14 department's Internet website. The department shall solicit and accept  
15 public comments on the proposed modification for a period of at least  
16 30 days after the date of publication. The department shall consider  
17 the public comments received during the comment period prior to  
18 making a modification pursuant to this paragraph.

19       (3) The department may, prior to a change in ownership of a  
20 contaminated site, enter into an administrative consent order with the  
21 prospective purchaser of the contaminated site providing for the  
22 modification of any or all of the direct oversight requirements of  
23 subsection c. of this section for the contaminated site. <sup>1</sup>The  
24 department shall not enter into an administrative consent order  
25 pursuant to this paragraph with any person who:

26       (a) has discharged a hazardous substance at the contaminated site,  
27 is in any way responsible for a hazardous substance at the site, or is  
28 otherwise liable for cleanup and removal costs at the site;

29       (b) has owned or operated the contaminated site; or

30       (c) is a predecessor, successor, subsidiary, partner, shareholder,  
31 assign, trustee in bankruptcy, responsible corporate official, or receiver  
32 appointed pursuant to a proceeding in law or equity, to any person  
33 described in subparagraphs (a) and (b) above. <sup>1</sup>

34       (4) The department may reinstate any or all of the direct oversight  
35 requirements that it modifies pursuant to paragraphs (1), (2), <sup>1</sup>**[and]**  
36 **or** <sup>1</sup> (3) of this subsection if, after the modification, the department  
37 finds that the person responsible for conducting the remediation has  
38 failed to comply with any applicable timeframe, administrative  
39 consent order modifying the requirements of direct oversight, or any  
40 law, rule, or regulation concerning the remediation of contaminated  
41 sites.

42 (cf: P.L.2013, c.283, s.2)

43  
44       27. This act shall take effect immediately.

45  
46  
47       Makes various changes to laws governing remediation of  
48 contaminated sites.